

TAB 29

Judy Waterer

May 9, 2007

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IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,
Plaintiff,
vs. CIVIL ACTION NO. 2005-219
ABBOTT LABORATORIES, INC.,
et al.,
Defendants.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

STATE OF HAWAII,
Plaintiff,
vs. CIVIL NO. 06-1-0720-04 EEH
ABBOTT LABORATORIES, INC.,
et al.,
Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,
vs. C.A. NO. 03-11865 PBS
MYLAN LABORATORIES, INC.,
et al.,
Defendants.

* * * * *

VOLUME I

The videotaped deposition of JUDY WATERER,
VOLUME I, was taken before Cornelia J.
Baker, Certified Court Reporter and
Certified Shorthand Reporter, as
Commissioner, on Wednesday, May 9, 2007,
commencing at approximately 10:13 a.m., in
the law offices of Kirkland & Ellis, 153
East 53rd Street, New York, New York
pursuant to the stipulations set forth
herein.

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<p>1 entities?</p> <p>2 MS. WITT: I believe she can.</p> <p>3 A. A number of years ago --</p> <p>4 MS. WITT: Wait and let him ask</p> <p>5 a question.</p> <p>6 THE WITNESS: I'm sorry.</p> <p>7 BY MR. CARTER:</p> <p>8 Q. What's the relationship between</p> <p>9 BIRI and Roxane?</p> <p>10 A. A number of years ago --</p> <p>11 MR. WINGET-HERNANDEZ: Object-</p> <p>12 ion to form.</p> <p>13 A. A number of years ago the</p> <p>14 manufacturing component and the sales,</p> <p>15 marketing, and development component were</p> <p>16 separated, so that now when we refer to BIRI,</p> <p>17 we're referring to the manufacturing site in</p> <p>18 Columbus, Ohio. And when we refer to Roxane,</p> <p>19 we're talking about sales, marketing, and</p> <p>20 development, which is in Bedford, Ohio --</p> <p>21 mostly in Bedford, and reports through Tom</p> <p>22 Murphy.</p> <p>23 MR. HEIDLAGE: Ms. Waterer, if</p> <p>24 you could keep your voice</p> <p>25 up, that would be very</p>	<p>1 Q. What is the difference,</p> <p>2 Ms. Waterer, between a brand drug and a</p> <p>3 generic drug?</p> <p>4 A. How do you mean?</p> <p>5 Q. Well, can you define for me,</p> <p>6 based on your own personal knowledge, what a</p> <p>7 brand drug is?</p> <p>8 A. A brand drug is a drug with a</p> <p>9 brand name that's marketed and sold as a</p> <p>10 brand.</p> <p>11 Q. And what's a generic drug?</p> <p>12 A. A generic drug means a</p> <p>13 chemically identical and by FDA defined as</p> <p>14 identical and substitutable and equivalent to</p> <p>15 whatever brand it's, it's made to be a copy</p> <p>16 of.</p> <p>17 Q. And in the scheme of brand</p> <p>18 drugs and generic drugs, what does Roxane</p> <p>19 sell?</p> <p>20 A. Primarily, generic.</p> <p>21 Q. But also some brand?</p> <p>22 A. Yes.</p> <p>23 Q. What form do Roxane's drugs</p> <p>24 come in? I'm assuming pill form?</p> <p>25 A. Yes.</p>
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<p>1 helpful. Thank you.</p> <p>2 Q. And how are those entities</p> <p>3 related to Ben Venue?</p> <p>4 A. I think it's reporting only.</p> <p>5 Q. Where's Ben Venue located?</p> <p>6 A. Bedford, Ohio.</p> <p>7 Q. Now, isn't there a German</p> <p>8 parent company involved in Roxane's corporate</p> <p>9 structure?</p> <p>10 MS. WITT: Object to the form.</p> <p>11 A. There's a German company that</p> <p>12 is in some way involved. I think that may be</p> <p>13 BIC that goes to Germany. I'm not exactly</p> <p>14 sure. I'd have to see charts to know.</p> <p>15 Q. Is BIC a family-owned business?</p> <p>16 A. I believe that corporate is</p> <p>17 family owned. I'm not sure of the structure</p> <p>18 of the individual components.</p> <p>19 Q. Is it a German family that owns</p> <p>20 BIC?</p> <p>21 A. I have no direct knowledge of</p> <p>22 that, but it is my understanding.</p> <p>23 Q. Do you know the name of the</p> <p>24 family?</p> <p>25 A. I would assume it's Boehringer.</p>	<p>1 Q. Inhalants?</p> <p>2 A. Yes.</p> <p>3 Q. Injectables?</p> <p>4 A. No. There was one injectable</p> <p>5 that we no longer have.</p> <p>6 Q. What was that?</p> <p>7 A. I believe it was Emethadone.</p> <p>8 Q. Are some of Roxane's drugs</p> <p>9 self-administered?</p> <p>10 A. I don't know what you mean by</p> <p>11 that.</p> <p>12 Q. Pills that people can take on</p> <p>13 their own.</p> <p>14 A. Yes.</p> <p>15 Q. Are some of Roxane's drugs</p> <p>16 physician administered?</p> <p>17 A. Not to my knowledge. I mean, I</p> <p>18 guess, anything, a doctor could give it to</p> <p>19 you or . . .</p> <p>20 Q. How long have you been employed</p> <p>21 by Roxane?</p> <p>22 A. I started with Roxane in 1996.</p> <p>23 Q. Tell me what your -- generally</p> <p>24 what your duties have been with Roxane since</p> <p>25 1996 to the present.</p>

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<p style="text-align: right;">Page 38</p> <p>1 A. When I came on board, I became 2 responsible for the Multisource Business 3 Unit, all of the marketing activities 4 associated with that, establishing the 5 department, setting that up; and then more 6 recently moving into focusing on the future 7 of Roxane. 8 Q. Tell the Jury what a 9 multisource drug is. 10 A. It's a broad definition, but it 11 generally means that it's a drug that's 12 available through more than one supplier. 13 Q. Have your duties with Roxane 14 included setting prices for drugs? 15 A. Yes. 16 Q. Have you been involved in the 17 setting of prices of Roxane's drugs from 1996 18 to the present? 19 A. Not in the last two to four 20 years, but from '96 up until that time, yes. 21 Q. Do you know what the 22 approximate annual revenues of Roxane are? 23 A. I'd have to look that up. I 24 don't have that on the top of my -- 25 Q. Any idea?</p>	<p style="text-align: right;">Page 40</p> <p>1 Notice for the deposition. 2 Q. Do you know? 3 A. I have a broad general 4 impression based upon how much rebate we pay, 5 and the impression's that it's a very minor 6 percentage. 7 Q. You understand, Ms. Waterer, 8 that Roxane, as a company, has chosen to 9 participate in state Medicaid programs? 10 A. Yes. 11 Q. And Roxane participates in 12 state Medicaid programs in Alabama, correct? 13 A. Yes. 14 Q. And Hawaii? 15 A. Let me stipulate, I don't know 16 that we participate by state. I think it's 17 just one, either you're in it or you're not. 18 Q. Right. 19 A. And we're in it, so I assume 20 that that means it's throughout the country. 21 Q. Very well. And when you say 22 Roxane's in it, Roxane voluntarily agrees to 23 become part of the Medicaid drug program and 24 that's pursuant to federal law, correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. I would say in the ballpark of 2 300 million, but it would be a very rough 3 guesstimate. 4 Q. Annually? 5 A. Yeah. 6 Q. Are you aware that state 7 Medicaid programs purchase drugs that are 8 sold by Roxane? 9 A. I'm aware that state 10 Medicare -- I'm sorry, did you say Medicare 11 or -- 12 Q. Medicaid. 13 A. That state Medicaid programs -- 14 I'm not aware that they buy them. I'm aware 15 that they may reimburse pharmacies that 16 dispense them in some manner, and that's 17 relatively recent knowledge. 18 Q. Okay. Do you have any idea of 19 what percentage of Roxane's revenues are 20 attributable to state Medicaid agencies 21 reimbursing pharmacies or pharmacists for 22 drugs? 23 MS. WITT: I object to the form 24 of the question, and that's 25 beyond the scope of the</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Roxane certainly could, if it 2 wanted to, could decide not to participate in 3 state Medicaid drug programs, correct? 4 A. I don't believe so. 5 Q. What do you mean? 6 A. I don't believe that we could 7 exist as a pharmaceutical company unless we 8 agreed to participate in the programs, 9 because nobody would buy our drugs. So it's 10 pretty much required. 11 Q. Right. So voluntary 12 participation in state Medicaid drug programs 13 is important to Roxane's existence, correct? 14 A. Again, with regard to 15 voluntary, we could not be in business if we 16 didn't. 17 Q. Very good. And when Roxane 18 voluntarily chooses to participate in a 19 Medicaid program, would you agree that Roxane 20 has a duty to familiarize itself with 21 Medicaid laws and comply with those laws? 22 MS. WITT: Object to the form. 23 A. As the laws pertain to the 24 manufacturing and distribution of the 25 product, yes.</p>

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<p>1 A. I believe so. And again, we 2 need to discuss price, not contract price. 3 Q. Is it fair to say that since 4 1991, Roxane has reported prices to First 5 DataBank? 6 A. I believe so. 7 Q. These prices reported to First 8 DataBank are reported electronically, 9 correct? 10 A. I'm not sure. In fact, I am 11 sure, because it -- well, it may be 12 electronic now. In the '90s, we used to get 13 paper copies to go through and correct and 14 mail back, so it hasn't always been 15 electronic. 16 Q. Tell me about this process in 17 the '90s where you got copies and you 18 corrected it and sent them back. 19 A. The pricing compendia would 20 occasionally send us a voluminous report and 21 say, Please check this for accuracy. And we 22 would go through and verify if their records 23 matched our records. And if they didn't, 24 we'd cross it out and put in the correct 25 price, as we knew it, and send it back and</p>	<p>1 to First DataBank? 2 A. Our customers require it. 3 Q. And when you say your customers 4 require it, who are the customers? 5 A. The pharmacies. 6 Q. Do you know why the pharmacies 7 require it? 8 A. Never thought about it. 9 Q. And at least today and in the 10 recent past, all of this reporting is done 11 electronically, correct? 12 A. I don't know. 13 Q. You don't know? 14 A. No. 15 Q. Who's the person at Roxane who 16 would know the most about how Roxane's prices 17 are reported to third-party compendia? 18 A. Probably Lesli Paoletti. 19 Q. Now, who is Lesli Paoletti? 20 A. She heads up the marketing of 21 the existing products now. 22 Q. Does she report to you? 23 A. No longer. 24 Q. How long did she report to you? 25 A. Several years. I don't</p>
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<p>1 hope that they would adjust it. 2 Q. These voluminous reports would 3 have the prices that Roxane reported, 4 correct? 5 A. Yes -- well, it wasn't always 6 accurate. But more often than not, yes. 7 Q. And these third-party compendia 8 would send the prices to Roxane and say, 9 Roxane, verify these prices, tell us if 10 they're correct, and if they're incorrect, 11 change them accordingly; is that right? 12 A. In the mid '90s, yes. 13 Q. And Roxane would do that? 14 A. Yes. 15 Q. And you were a part of that 16 process? 17 A. Indirectly, but yes. 18 Q. Do you know if that 19 specifically happened with First DataBank? 20 A. I don't remember which one sent 21 it. 22 Q. Are you familiar with the term 23 "National Drug Data File"? 24 A. No. 25 Q. Why does Roxane report prices</p>	<p>1 remember the exact time frame. 2 Q. Who does she report to now? 3 A. Paul Kersten. 4 Q. And what's his title? 5 A. General manager, Roxane. 6 Q. Can you distinguish between, 7 for instance, First DataBank and Red Book? 8 MS. WITT: Object to the form. 9 A. I don't think so. 10 Q. What about, can you distinguish 11 between First DataBank or Red Book or 12 Medispan? 13 A. I don't know what you're . . . 14 Q. Do you recognize those entities 15 as being third-party compendia? 16 A. Yes. 17 Q. And do you know that Roxane 18 reports prices to those entities? 19 A. I believe that's correct. 20 Q. And do you know that those 21 entities, in turn, publish prices to various 22 payors including state Medicaid agencies? 23 A. I'm not aware of who they 24 publish it to. But I am aware that, as I 25 said before, that they sell their data to</p>

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<p style="text-align: right;">Page 66</p> <p>1 people interested in purchasing it.</p> <p>2 Q. You're not aware as to whether</p> <p>3 or not some of those purchasers are state</p> <p>4 Medicaid agencies?</p> <p>5 A. I have no way of knowing who</p> <p>6 their purchasers are.</p> <p>7 Q. Do you know how state Medicaid</p> <p>8 agencies find out drug prices that they use</p> <p>9 to reimburse?</p> <p>10 A. No.</p> <p>11 Q. Who at Roxane would know that?</p> <p>12 A. I doubt anybody.</p> <p>13 MS. WITT: Can we take a break</p> <p>14 when you're at a good spot?</p> <p>15 MR. CARTER: We'll take one</p> <p>16 right now.</p> <p>17 MS. WITT: Great.</p> <p>18 THE VIDEOGRAPHER: We're going</p> <p>19 off the Record. This is</p> <p>20 the end of Tape No. 1. The</p> <p>21 time is 11:07 a. m.</p> <p>22 (A brief recess was taken.)</p> <p>23 THE VIDEOGRAPHER: Beginning of</p> <p>24 Tape No. 2. The time is</p> <p>25 11:30 a.m.</p>	<p style="text-align: right;">Page 68</p> <p>1 about general knowledge</p> <p>2 that Roxane may have about</p> <p>3 the operation of state</p> <p>4 Medicaid, generally, that</p> <p>5 are important, relevant,</p> <p>6 and applicable to the</p> <p>7 claims that have been</p> <p>8 lodged by the three states</p> <p>9 that are here. And I</p> <p>10 anticipate that I will be</p> <p>11 asking questions such as</p> <p>12 those.</p> <p>13 BY MR. CARTER</p> <p>14 Q. Ms. Waterer, we have been</p> <p>15 discussing a little bit about prices reported</p> <p>16 to third-party compendia, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And we've talked about how</p> <p>19 third-party compendia includes First DataBank</p> <p>20 and Red Book, correct?</p> <p>21 A. Among others, yes.</p> <p>22 Q. When Roxane reports prices to</p> <p>23 First DataBank and others, does Roxane report</p> <p>24 an AWP price?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. WINGET-HERNANDEZ: While</p> <p>2 off the Record, Ms. Witt</p> <p>3 and I had a short exchange</p> <p>4 concerning the last offer</p> <p>5 that she made for us to</p> <p>6 limit our questions. I</p> <p>7 would simply like to state</p> <p>8 that Hawaii certainly</p> <p>9 agrees that the only states</p> <p>10 that are involved in this</p> <p>11 deposition are the states</p> <p>12 of Alabama, Hawaii, and</p> <p>13 Massachusetts. And that</p> <p>14 when I ask questions about</p> <p>15 the operations of Hawaii's</p> <p>16 Medicaid program, I mean by</p> <p>17 those questions to limit</p> <p>18 the Witness to testify</p> <p>19 about -- specifically about</p> <p>20 the Hawaii Medicaid</p> <p>21 Agency's operations.</p> <p>22 But I also</p> <p>23 indicated, and I think</p> <p>24 Ms. Witt has agreed, that</p> <p>25 there are general questions</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. What is an AWP price?</p> <p>2 A. It's the way -- what we mean at</p> <p>3 Roxane when we use AWP, it's a price that's</p> <p>4 generally set most commonly when a product</p> <p>5 launches at 10 percent below the brand's AWP.</p> <p>6 I don't believe it has like an actual</p> <p>7 definition, but it's kind of a functional</p> <p>8 term of what number we put when we see that.</p> <p>9 Q. AWP means Average Wholesale</p> <p>10 Price, correct?</p> <p>11 A. I believe it's an acronym for</p> <p>12 Average Wholesale Price. I don't know that</p> <p>13 there's a literal meaning of Average</p> <p>14 Wholesale Price that it's associated with.</p> <p>15 Q. How does Roxane define Average</p> <p>16 Wholesale Price?</p> <p>17 A. I think, as I said before, we</p> <p>18 use it as a functional term. It is most</p> <p>19 commonly at launch tied to a brand's AWP. It</p> <p>20 is most commonly set at 10 percent below the</p> <p>21 brand's AWP when a product launches. And for</p> <p>22 the most part, that's about as much as we</p> <p>23 think about AWP.</p> <p>24 Q. What is a Wholesale Acquisition</p> <p>25 Cost?</p>

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<p>1 A. I'd have to speculate. I don't 2 know. 3 Q. Does Roxane ever change the 4 AWP's that are reported to First DataBank? 5 A. Roxane has changed AWP's and 6 subsequently reported the changes. 7 Q. And do the changes -- well, 8 what has to happen for Roxane to change an 9 AWP? 10 A. I don't understand. 11 Q. Why would Roxane change an AWP? 12 A. We have products in a variety 13 of categories. Some of our products, where 14 the competitive environment will permit us to 15 take a price increase, we would take a price 16 increase. Somewhat the way a brand product 17 might, as the cost of living goes up, we 18 would take a price increase. That would be 19 one example. 20 Q. Does Roxane ever change AWP's 21 based on customer concerns? 22 A. I can recall one example. 23 Q. Tell me what you remember about 24 that example. 25 A. We had a product, Furosemide --</p>	<p>1 Q. And what did Roxane do as a 2 result of those customer concerns? 3 A. After quite a few months of 4 analysis and verification that it wasn't just 5 one customer that was saying this, we ended 6 up bringing our pricing in line with 7 everybody else's in the business. 8 Q. I mean, in part, competitive- 9 ness drives the AWP that Roxane reports, 10 correct? 11 MS. WITT: Object to the form. 12 A. I think it's probably a 13 mischaracterization of the importance of AWP. 14 AWP is almost always the same for everybody, 15 so it's not something that people consider. 16 Q. Well, you know that state 17 Medicaid agencies consider AWP when they 18 reimburse, correct? 19 A. I've become aware of that, yes. 20 Q. What do you mean when you say 21 you've become aware of that? 22 A. This litigation in various 23 forms has been going on for many, many, many 24 years. And because of it, I've learned a lot 25 of things that I wouldn't normally need to</p>
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<p>1 I think it was Furosemide. 2 THE COURT REPORTER: What was 3 that? 4 THE WITNESS: I think it was 5 Furosemide, F-U-R-O-S-E- 6 M-I-D-E. 7 A. Competitive situations, we'd 8 never really sold much. I think we had less 9 than a one- or two-percent market share. 10 Sold virtually none of it. 11 The competitive situation 12 changed in the marketplace. A number of 13 vendors came to us and said, Hey, we never 14 looked at you or talked to you about it 15 before, because we were happy with our 16 vendor. Now we're not. Can you give us a 17 bid? 18 We gave them very competitive 19 bids. And the feedback that we got from the 20 customers was not joy that we'd given them 21 competitive bids, but frustration, because 22 they indicated that our AWP was out of line 23 with everybody else's in the market, and they 24 would be unable to award us any business at 25 that AWP.</p>	<p>1 know for my day-to-day activities. 2 Q. Didn't you know back as early 3 as 1996 that state Medicaid agencies 4 reimbursed based on AWP? 5 A. I don't know if I knew 6 specifically state. I would say that I had a 7 general awareness that private-party 8 insurers, that AWP may be of -- something 9 that they tied reimbursement to. 10 I don't recall having specific 11 knowledge as to an individual state or a 12 program. 13 Q. But you've known since as early 14 as 1996 when you started with Roxane that the 15 AWP that Roxane reported was relied upon by 16 certain payors when they reimbursed, correct? 17 A. In a broad general sense, 18 that's -- as I said before, aware that 19 certain payors, primarily private payors, 20 have some formulas that tied to that, yes. 21 Q. There is no other reason or 22 purpose for Roxane to report AWP's, other than 23 the fact that certain payors rely on that AWP 24 when they reimburse, correct? 25 A. No.</p>

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<p>1 is AWP.</p> <p>2 Q. Do you have any knowledge as to</p> <p>3 how the Alabama Medicaid Agency interprets</p> <p>4 AWP?</p> <p>5 MS. WITT: Object to the form.</p> <p>6 A. No. I would assume like the</p> <p>7 industry does.</p> <p>8 Q. Why would you assume that?</p> <p>9 A. Because it's an industry term,</p> <p>10 and they're choosing to use it. So I would</p> <p>11 assume that they know what it means.</p> <p>12 Q. Would it be reasonable for the</p> <p>13 Alabama Medicaid Agency to assume that the</p> <p>14 Average Wholesale Price actually means the</p> <p>15 Average Wholesale Price?</p> <p>16 MS. WITT: Object to the form</p> <p>17 of the question; beyond the</p> <p>18 scope of the deposition</p> <p>19 notice.</p> <p>20 A. Again, you're saying the same</p> <p>21 question that Average Wholesale Price means.</p> <p>22 I will tell you that AWP is AWP. I don't</p> <p>23 know that we've defined what Average</p> <p>24 Wholesale Price means to Alabama. So I</p> <p>25 don't -- I'm -- I just don't know how to</p>	<p>1 You're talking about WAC? There is a</p> <p>2 difference between AWP and WAC, yes.</p> <p>3 Q. Is there a formula that Roxane</p> <p>4 uses to determine the difference between AWP</p> <p>5 and WAC?</p> <p>6 A. In some instances, yes, it's</p> <p>7 product specific.</p> <p>8 Q. Give me an example of how</p> <p>9 they're tied together.</p> <p>10 A. In general, they're not.</p> <p>11 During an early launch period when you have</p> <p>12 no idea what the market price is going to be,</p> <p>13 one may be inclined to use a similar</p> <p>14 difference between AWP and WAC as what the</p> <p>15 brand did.</p> <p>16 In other instances where you</p> <p>17 have more market intelligence or more</p> <p>18 information, you might place the WAC</p> <p>19 otherwise. So it's really very product</p> <p>20 specific. There's not an overall formula</p> <p>21 that's applied universally.</p> <p>22 Q. Would you understand and</p> <p>23 interpret the spread to be the difference</p> <p>24 between the net acquisition cost paid by a</p> <p>25 purchaser and the amount of reimbursement</p>
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<p>1 answer your question.</p> <p>2 Q. Are you familiar with the term</p> <p>3 "spread"?</p> <p>4 A. Yes.</p> <p>5 Q. Are you familiar with the</p> <p>6 phrase "marketing the spread"?</p> <p>7 A. Yes.</p> <p>8 Q. Well, how would you define</p> <p>9 spread?</p> <p>10 A. Difference between two numbers.</p> <p>11 Q. How would you define spread in</p> <p>12 the terms of a reported AWP?</p> <p>13 MS. WITT: Object to the form.</p> <p>14 A. I would have to know what the</p> <p>15 second number was.</p> <p>16 Q. Isn't there a spread between</p> <p>17 the reported AWP and the actual AWP?</p> <p>18 A. If you chose to look at the</p> <p>19 difference -- wait a minute. Now, you're</p> <p>20 doing it again. I don't know what you mean</p> <p>21 by actual AWP.</p> <p>22 Q. Isn't there a difference</p> <p>23 between the reported AWP and the actual</p> <p>24 acquisition cost of Roxane's drugs?</p> <p>25 A. Actual acquisition price.</p>	<p>1 received --</p> <p>2 (Brief interruption)</p> <p>3 A. If the specific --</p> <p>4 Q. Do you mind if we start over?</p> <p>5 Would you interpret the spread</p> <p>6 to mean the difference between the net</p> <p>7 acquisition cost paid by a purchaser and the</p> <p>8 amount of reimbursement received by that</p> <p>9 purchaser?</p> <p>10 MS. WITT: Object to the form.</p> <p>11 A. If somebody were to define</p> <p>12 spread the way that you just did, then for</p> <p>13 that instance, that's how spread would be</p> <p>14 defined.</p> <p>15 Q. It's a difference in that</p> <p>16 instance between what was paid and what was</p> <p>17 reimbursed, correct?</p> <p>18 A. The cost versus the</p> <p>19 reimbursement at a pharmacy level is how you</p> <p>20 want to define that spread in that case.</p> <p>21 Q. Do you know whether or not</p> <p>22 pharmacies or pharmacists ever choose</p> <p>23 particular drugs based on a spread?</p> <p>24 MS. WITT: Object to the form;</p> <p>25 lack of foundation.</p>

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<p style="text-align: right;">Page 102</p> <p>1 A. I don't know how they pick 2 drugs, so I can't -- I've never been a 3 purchaser at a retail pharmacy. 4 Q. Is Roxane concerned with the 5 methods used by pharmacists to select drugs? 6 A. We're concerned that they -- 7 that we'd be on a level playing field, and 8 that they'd be willing to accept our product. 9 We generally compete on contract price. 10 Q. Well, what's the relevance of 11 contract price to a pharmacist if that 12 pharmacist didn't purchase the drugs directly 13 from Roxane and receives compensation by way 14 of reimbursement? 15 MS. WITT: Object to the form. 16 A. I'm -- what's the relevance of 17 the contract price? They want to buy it as 18 cheaply as they can. 19 Q. Well, I mean, there's no 20 contract price involved at that level, 21 correct? I mean, when you have a pharmacist 22 who is making drug decisions based on a 23 spread, the pharmacist's concern is the 24 spread, not the contract price, correct? 25 MS. WITT: Object to the form.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. So it's your testimony that 2 Roxane has never concerned itself with the 3 competitor's price and tried to market the 4 spread to gain market share away from that 5 competitor? 6 A. It -- again, on a very rare 7 instance, there may have been something that 8 had to do with the difference in AWP's. It 9 would not be our general practice. It would 10 be a very rare occasion. 11 Q. But it has happened, correct? 12 A. Okay. Give me the question 13 again, because I want to make sure it's very 14 specific. 15 Q. Has Roxane ever concerned 16 itself with marketing the spread to the 17 extent that it attempted to market the spread 18 and gain market share from a competitor? 19 MS. WITT: Object to the form. 20 A. It's possible. 21 Q. It's very possible, isn't it? 22 MS. WITT: Object to the form. 23 A. I don't have any -- I can't 24 recollect that. 25 Q. I mean, there's no purpose in</p>
<p style="text-align: right;">Page 103</p> <p>1 A. I don't know what pharmacists 2 are deciding on. 3 Q. Is it your testimony that 4 Roxane is simply not concerned with the 5 methods that pharmacists use to pick drugs? 6 A. We don't have knowledge. When 7 we go out and we try to get business awarded, 8 we compete based upon contract price. 9 Q. Has Roxane ever concerned 10 itself with the spread as it relates to the 11 pharmacists' reimbursement? 12 A. If there was an exceptional 13 instance where our pricing was out of line -- 14 I think I talked about, I believe it was 15 Furosemide -- in an exceptional case where it 16 was brought to our attention, we might take 17 steps to bring ourselves into the average or 18 norm of what everybody else is doing. 19 But in the industry, most 20 everybody's pricing is set very similar so 21 that the spread issue isn't something that 22 generally comes up. If everybody's pricing 23 is in the same average area, you're competing 24 on the contract price. That's generally what 25 occurs in the negotiation.</p>	<p style="text-align: right;">Page 105</p> <p>1 marketing the spread other than to gain 2 market share, correct? 3 A. What do you mean when you say 4 "market the spread"? 5 Q. You don't know what that means? 6 A. I want to make sure that it 7 means the same to both of us. I've heard it 8 defined different. 9 Q. You tell me what it means. 10 A. When I hear the term "market 11 the spread," being a marketing person, I 12 think that it is an active initiative, a 13 directive to go out and make this your 14 standard process for selling. 15 Q. And Roxane has utilized that 16 tactic, correct? 17 A. I believe there may have been a 18 few instances of it, yeah. I don't recall 19 any specifics. 20 Q. What's an FUL? 21 A. Don't know. 22 Q. Ever heard the term "federal 23 upper limit"? 24 A. I may have. I don't remember. 25 Q. Speaking on behalf of Roxane,</p>

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<p style="text-align: right;">Page 198</p> <p>1 Q. You can see that this document 2 discusses WAC and AMP, do you see that? 3 A. I see WAC. 4 Q. Look at the bottom left-hand 5 corner on the first page. 6 MS. WITT: You said AMP. 7 MR. CARTER: How many times 8 have I done that today? 9 A. AWP. 10 Q. Let me start over. 11 A. Okay. 12 Q. You see that this document 13 talks about WAC and AWP, correct? 14 A. Yes. 15 Q. Now, on the next page, it 16 discusses an AWP spread. And down in the 17 right-hand corner, Patient Prescription 18 Payment, Medicaid; do you see that? 19 A. Yes. 20 Q. Did anyone on the generic side, 21 to your knowledge, ever create documents 22 similar to this? 23 A. Similar to which particular 24 documents? 25 Q. This one.</p>	<p style="text-align: right;">Page 200</p> <p>1 A. -- to terribly oversimplify it, 2 on the generic side, we don't really know 3 what a doctor is. We don't really have 4 interest in what the product is used for. By 5 definition, our product is the same as the 6 brand. So our customer base is going to be 7 pharmacies, people that actually purchase the 8 product. So we don't speak to a physician. 9 It's just very terribly different. 10 MR. CARTER: All right. Let's 11 take a break, and let me 12 organize a little bit. 13 MS. WITT: Okay. 14 THE VIDEOGRAPHER: Going off 15 the Record at 4:24 p.m. 16 (Whereupon a brief recess was 17 taken.) 18 THE VIDEOGRAPHER: We're back 19 on the Record at 4:38 p.m. 20 BY MR. CARTER: 21 Q. All right. Let me show you 22 what I'm going to mark as Plaintiffs' Exhibit 23 16. Tell me, please, ma'am, if you recognize 24 that. 25 (Whereupon Plaintiffs' Roxane</p>
<p style="text-align: right;">Page 199</p> <p>1 A. The four -- not to my 2 knowledge. 3 Q. Do you know whether or not 4 there are Roxane documents dealing with 5 generics that talk about patient prescription 6 payment and Medicaid? 7 A. Not that I recall. 8 Q. Is there any substantial 9 difference in the way Roxane markets its 10 generics versus how it markets its brand 11 drugs? 12 A. They're about as close to 13 totally different as two things could be. 14 Q. Explain that to me, please. 15 A. Typically, a brand product is 16 sold by a very, very large sales force that 17 calls primarily on physicians and generally 18 sells on the clinical merits of the product. 19 It's a very scientific, clinical-type sale. 20 Typically, on the generic 21 side -- and I think you've seen me 22 struggle -- we don't even know what the drugs 23 are used for. Our market strategy is to 24 very, very oversimplify -- 25 (Brief telephonic interruption.)</p>	<p style="text-align: right;">Page 201</p> <p>1 Waterer No. 16 was marked for 2 identification and attached 3 hereto.) 4 (Witness reviewed document.) 5 A. Yes. 6 Q. What is this, please, ma'am? 7 A. This is an e-mail about having 8 Bob Sykora pull together some market research 9 from Tom Russillo to support an explanation 10 of why we should raise our AWP on Furosemide. 11 Q. What was your opinion? Did you 12 want to raise the AWP? 13 A. I wanted to bring AWP into line 14 with the competitors. The gist of it is that 15 if we didn't do that, we were out of the 16 market. 17 Q. Okay. And you posed a question 18 or, I guess, Issue No. 2, to Robert Sykora in 19 the bottom e-mail, the July 7th, 2000, 20 e-mail, correct? 21 A. Yes. 22 Q. And the issue there is whether 23 or not to increase the AWP of Furosemide, 24 correct? 25 A. Yes.</p>

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<p style="text-align: right;">Page 202</p> <p>1 Q. And in Point No. 2 Robert says, 2 towards the end, Tom is aware of the AWP 3 situation and will support the increase -- 4 I'm sorry. That's your statement, correct? 5 A. In the center? I'm looking at 6 Point No. 2. 7 Q. Point No. 2, towards the bottom 8 where it says, Tom is aware. Point No. 2 at 9 the bottom. Your e-mail to Bob. 10 A. Tom is aware of the AWP -- so 11 yes. 12 Q. And is that Tom Via? 13 A. No. That's Tom Russillo. 14 Q. Okay. And Tom had to sign off 15 on any AWP increase? 16 A. He had to sign off on price 17 changes. 18 Q. Okay. And Robert responds back 19 to you and says, I feel that you've thrown 20 Furo into my lap when the entire generic line 21 AWP's needs to be reviewed and adjusted. The 22 most consistent complaint I hear from retail 23 customers is our AWP's. And then he says, I 24 realize there is political pressure on AWP 25 currently, but it should not run our</p>	<p style="text-align: right;">Page 204</p> <p>1 and outside the scope of 2 the deposition notice. 3 A. When I read this, I believe -- 4 and Bob would have to answer as to what he 5 was referring to -- but I believe that they 6 were -- that he was referring to our 7 corporate parents. 8 Q. When he referred to "Big 9 Brother," you think that means the corporate 10 parents? 11 A. I've -- it's not -- there's 12 been occasions when that term has been used 13 to -- in reference to corporate parents. 14 Q. Why would corporate parents 15 punish you for increasing the AWP? 16 A. I don't know. 17 Q. I mean, the goal of increasing 18 the AWP, I mean, granted, you want to bring 19 it in line, but the goal is to sell more 20 drugs, right? 21 A. I believe this is why it was 22 going through Tom Russillo to make sure that 23 corporate was in line with it. And it 24 appears in this that Bob was bristling at 25 being asked to get this information.</p>
<p style="text-align: right;">Page 203</p> <p>1 business. 2 Do you know what he meant by, 3 Political pressure on AWP currently? 4 A. I think you have to ask him. 5 I'm not sure whether that was an internal or 6 external reference. 7 Q. Was there political pressure on 8 AWP changes both internally and externally in 9 July of 2000? 10 A. It's really hard for me to put 11 my brain back to what the world was in 2000. 12 Because this is at least a year or two after, 13 I think, the Texas litigation, I think that 14 anything that had to do with AWP was of 15 concern to us in-house. 16 Q. He goes on to say, Logic 17 dictates that no matter what the AWP is, if 18 Big Brother wants to punish, they will. So 19 why not make some money meanwhile? Do you 20 see that? 21 A. Yes. 22 Q. Do you think the reference to 23 "Big Brother" means that he's talking about 24 external political pressure on AWP's? 25 MS. WITT: Object to the form,</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Well, certainly, the corporate 2 parents -- and when you say "corporate 3 parents," are you talking about the outfit in 4 Germany? 5 A. Germany or Connecticut or on up 6 the line, yeah. 7 Q. Well, I mean, have you or Bob 8 ever been punished by the corporate parents 9 in Germany? 10 A. Not directly, no. 11 Q. Have you or Bob ever been 12 punished by the corporate parents in 13 Connecticut? 14 A. We've been put on tasks forces. 15 It's -- you know, with this, you have to talk 16 to Bob. 17 Q. Right. 18 A. He was speaking very 19 emotionally. I told you what I believe it 20 means. And I think beyond that, I can't 21 speculate further as to what his intentions 22 were. 23 Q. Is Bob still employed by 24 Roxane? 25 A. No.</p>

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1 of THE COMMONWEALTH OF MASSACHUSETTS,
 2 Plaintiff, versus MYLAN LABORATORIES, INC.,
 3 et al., Defendants, C.A. No. 03-11865 PBS,
 4 now pending in the United States District
 5 Court, District of Massachusetts; and that
 6 the foregoing pages contain a true and
 7 accurate transcription of the examination of
 8 said witness by counsel for the parties set
 9 out herein; that the reading and signing of
 10 said deposition was not waived by witness
 11 and counsel for the parties.

12 I further certify that I am neither of
 13 kin nor of counsel to the parties to said
 14 cause, nor in any manner interested in the
 15 results thereof.

16 This the 24th day of May, 2007.

17
 18
 19
 20 Cornelia J. Baker
 21 Certified Shorthand Reporter,
 22 Certified Court Reporter and
 23 Notary Public for the
 24 State of Alabama

25 My Commission expires 6/9/08.

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1 * * * * *
 2 APPEARANCES

3
 4 Representing the State of Alabama:
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1 IN THE CIRCUIT COURT OF
 2 MONTGOMERY COUNTY, ALABAMA

3 STATE OF ALABAMA,
 4 Plaintiff,
 5 vs. CIVIL ACTION NO. 2005-219
 6 ABBOTT LABORATORIES, INC.,
 7 et al.,
 8 Defendants.

9 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
 10 STATE OF HAWAII

11 STATE OF HAWAII,
 12 Plaintiff,
 13 vs. CIVIL NO. 06-1-0720-04 EEH
 14 ABBOTT LABORATORIES, INC.,
 15 et al.,
 16 Defendants.

17 UNITED STATES DISTRICT COURT
 18 DISTRICT OF MASSACHUSETTS

19 THE COMMONWEALTH OF MASSACHUSETTS,
 20 Plaintiff,
 21 vs. C.A. NO. 03-11865 PBS
 22 MYLAN LABORATORIES, INC.,
 23 et al.,
 24 Defendants.

25 * * * * *

VOLUME II
 The videotaped deposition of JUDY WATERER,
 VOLUME II, was taken before Cornelia J.
 Baker, Certified Court Reporter and
 Certified Shorthand Reporter, as
 Commissioner, on Thursday, May 10, 2007,
 commencing at approximately 9:37 a.m., in
 the law offices of Kirkland & Ellis, 153
 East 53rd Street, New York, New York
 pursuant to the stipulations set forth
 herein.

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1 (continued Appearances)
 2 Participating by Teleconference,
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4 MR. MICHAEL MOORE
 5 Attorney at Law
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 8 Dallas, Texas 75201

9 Also present:
 10 MS. NICOLE MADDUX
 11 MR. JEFF S. BAKER, CLVS

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<p style="text-align: right;">Page 250</p> <p>1 entity than had previously exercised 2 authority and had responsibility for them. 3 Do you know what I'm talking about? 4 A. Vaguely, yeah. 5 Q. Okay. Well, that's kind of a 6 vague description of our discussion. 7 What I'm trying to get you to 8 tell me is what happened when, at this time 9 prior to the legal entity restructuring, that 10 resulted in certain drugs being transferred 11 to another entity? 12 A. I'm not sure I understand the 13 question. 14 Q. Okay. Well, you remember we 15 had a little discussion earlier about a time 16 when, in about 2002 or so, certain drugs were 17 moved from one organization to another, 18 right? 19 A. I guess. Oh, the multisource 20 products moved to the Roxane legal entity. 21 Q. Okay. I guess -- 22 A. From what we were referring to 23 previously as old Roxane. 24 Q. And when did that happen? 25 A. I believe that the assets</p>	<p style="text-align: right;">Page 252</p> <p>1 correct? 2 A. I understand that the 3 responsibility for the product management of 4 it transferred. I'm not certain when the 5 transfer of the actual asset occurred. 6 Q. Can you describe in laymen's 7 terms what you mean by "the transfer of the 8 asset"? 9 A. When you market a product, you 10 own intellectual property associated with it. 11 There's an ownership for the ANDA or the NDA. 12 There's patent rights associated with it. 13 And those can be very separate from a 14 marketing license to market it, so -- I mean, 15 in summary, I'm not certain when what I just 16 described as the asset moved to BIPI on those 17 products. I know that responsibility for 18 marketing and the marketing team that 19 supported them in the product management 20 moved to BIPI in the early 2000s. 21 Q. Okay. So that -- so that I'm 22 clear: I think what you're telling me is 23 that at some point in the early 2000s, 24 Boehringer Ingelheim Pharmaceuticals, 25 Incorporated, entered into a marketing</p>
<p style="text-align: right;">Page 251</p> <p>1 transferred when the restructure occurred. 2 And to the best of my recollection, I think 3 it was 2005, but I'm not sure. 4 Q. Okay. So when the old Roxane 5 Laboratories, Incorporated, became Boehringer 6 Ingelheim Roxane, Incorporated, on the one 7 hand, and Roxane Laboratories, Incorporated, 8 on the other, the multisource products -- 9 responsibility for the multisource products 10 was transferred from the old Roxane 11 Laboratories, Inc., to the new Roxane 12 Laboratories, Inc., correct? 13 A. Correct. 14 Q. And what happened to 15 responsibility for the brand products at that 16 time? 17 A. Those had already been 18 transferred to BIPI years earlier. 19 Q. Okay. I think this may have 20 been the point that we were talking about 21 earlier. There was a point in time, prior to 22 the legal reorganization, when the brand 23 products were transferred from the old Roxane 24 Laboratories, Incorporated, to Boehringer 25 Ingelheim Pharmaceuticals, Incorporated,</p>	<p style="text-align: right;">Page 253</p> <p>1 license with Roxane Laboratories, 2 Incorporated, to market its branded products. 3 And then sometime later, the 4 actual intellectual property and other 5 ownership rights that Roxane Laboratories, 6 Incorporated, had in those brand products was 7 transferred to Boehringer Ingelheim 8 Pharmaceuticals, Incorporated. Is that what 9 you're telling me? 10 A. No. What I'm saying is I don't 11 know if they did a licensing and then a 12 transfer or if they transferred it all. I'm 13 not certain what the sequence of events was 14 and the timing that ultimately led to them 15 having possession of it. 16 Q. But to be clear: Your 17 testimony is that responsibility for the 18 marketing was transferred to Boehringer 19 Ingelheim Pharmaceuticals, Incorporated, 20 before the transfer of the assets, to your 21 recollection, right? 22 A. Again, no. I'm not sure when 23 they moved it, they all moved together or if 24 it happened at a later date. 25 Q. Okay. That's clear. Thank</p>

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<p>1 you.</p> <p>2 Would you tell me, please, if</p> <p>3 you recall, what the names of the branded</p> <p>4 drugs were that were transferred back then in</p> <p>5 the early 2000s from the old Roxane</p> <p>6 Laboratories, Incorporated, to Boehringer</p> <p>7 Ingelheim Pharmaceuticals, Incorporated?</p> <p>8 A. I'll do my best. It will be a</p> <p>9 partial list, because I was not intimately</p> <p>10 involved with the branded products. I'll</p> <p>11 recall the ones that come to mind. Viramune</p> <p>12 was one. Roxicodone, Oramorph.</p> <p>13 MR. MILES: Which? I'm sorry.</p> <p>14 THE WITNESS: Oramorph.</p> <p>15 A. It's possible that Marinol</p> <p>16 went, but that might have -- we might have</p> <p>17 lost that product before it transferred.</p> <p>18 That was something from another company.</p> <p>19 Q. What was the other company?</p> <p>20 A. I don't recall. Those are the</p> <p>21 ones I recall. I'm sure it's not complete.</p> <p>22 Q. If we come across one later on,</p> <p>23 we'll add it to the list.</p> <p>24 The list that you just gave me,</p> <p>25 Viramune, Roxicodone, Oramorph, and Marinol</p>	<p>1 events.</p> <p>2 Q. It's clear, anyway, I think,</p> <p>3 from your prior testimony, that when you came</p> <p>4 to Roxane Laboratories, Inc., you came with</p> <p>5 certain knowledge and skills that were</p> <p>6 primarily in the multisource arena; isn't</p> <p>7 that fair?</p> <p>8 A. My most current experience had</p> <p>9 been in the multisource arena.</p> <p>10 Q. And I don't mean to discount</p> <p>11 your experience at all. I mean, it's clear</p> <p>12 from the Record that you'd been involved in</p> <p>13 the drug industry, both brand and generic,</p> <p>14 for a number of years before you came to</p> <p>15 Roxane, and that you came to Roxane with a</p> <p>16 wealth of experience in both.</p> <p>17 But the reason why you came to</p> <p>18 Roxane in the first place was basically to</p> <p>19 run the marketing side of their multisource</p> <p>20 business, wasn't it?</p> <p>21 A. It was a -- it was a position</p> <p>22 that was an evolving position. At the time</p> <p>23 that I came, the belief was that it was going</p> <p>24 to be to set up programs. I was actually</p> <p>25 titled Program Manager. As I got there and</p>
Page 255	Page 257
<p>1 are brands that you remember were transferred</p> <p>2 to Boehringer Ingelheim Pharmaceuticals,</p> <p>3 Incorporated, in the early 2000s, right?</p> <p>4 A. With the possible exception of</p> <p>5 Marinol, because I'm not certain if that was</p> <p>6 still around at that time.</p> <p>7 Q. Did you ever have any</p> <p>8 responsibility for setting prices or handling</p> <p>9 product management or any responsibilities at</p> <p>10 all when you worked for the old Roxane</p> <p>11 Laboratories, Incorporated, for the four</p> <p>12 products that we just named?</p> <p>13 A. No.</p> <p>14 Q. So it's clear to you today that</p> <p>15 you were never involved in any pricing</p> <p>16 decisions concerning Viramune, Roxicodone,</p> <p>17 Oramorph, or Marinol, right?</p> <p>18 MS. WITT: Object to the form</p> <p>19 of the question.</p> <p>20 A. I would say in a direct</p> <p>21 capacity, I had no responsibility for that.</p> <p>22 It's possible as part of the management team</p> <p>23 that I might have been copied on a e-mail or</p> <p>24 been in a meeting where something was</p> <p>25 mentioned, but I don't recall any of those</p>	<p>1 became immersed in the job, it became clear</p> <p>2 that the greater need was more multisource in</p> <p>3 general and to run the multisource business,</p> <p>4 so it -- it was a previously unfilled</p> <p>5 position that essentially I had to carve out.</p> <p>6 Q. Well, one of the reasons why</p> <p>7 the position was evolving was that Roxane</p> <p>8 was engaged in a -- Roxane Laboratories,</p> <p>9 Incorporated, the old RLI, was actually</p> <p>10 increasing its emphasis on multisource</p> <p>11 products; isn't that true?</p> <p>12 A. I don't know that increasing</p> <p>13 its emphasis would be appropriate. At that</p> <p>14 time, the brands were growing much faster</p> <p>15 than the generics, and the generics were</p> <p>16 somewhat stagnating. I think they were just</p> <p>17 looking for experience in a generics' market.</p> <p>18 Q. Okay. So your testimony is</p> <p>19 that at the time that you arrived, there was</p> <p>20 already a developed business at the old</p> <p>21 Roxane Laboratories, Incorporated, in the</p> <p>22 generic industry, but that it was languishing</p> <p>23 and that you were brought in to give it</p> <p>24 direction, right?</p> <p>25 A. That's what it evolved into,</p>

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<p style="text-align: right;">Page 278</p> <p>1 like that, right?</p> <p>2 A. I believe that's correct, with</p> <p>3 the exception of the 0054.</p> <p>4 Q. Right. And the 0054 -- the</p> <p>5 0054 actually corresponds to an entity that</p> <p>6 has an application for a drug on file with</p> <p>7 the Food and Drug Administration; are you</p> <p>8 aware of that?</p> <p>9 A. My under -- I'm not sure how it</p> <p>10 evolved. It's my understanding that</p> <p>11 manufacturers are assigned a code that they</p> <p>12 put in front of all of their products.</p> <p>13 Q. And is it also your</p> <p>14 understanding that the manufacturers</p> <p>15 themselves assign the rest of the number?</p> <p>16 A. I can only speak from the</p> <p>17 experience that I have. And that's my</p> <p>18 understanding.</p> <p>19 Q. Okay. Let's look for a moment</p> <p>20 at these drugs. Azathioprine, is that a</p> <p>21 brand or a generic drug?</p> <p>22 A. That's a generic.</p> <p>23 Q. And so -- well, is it a drug</p> <p>24 that had been launched already when you</p> <p>25 arrived on the scene at the old RLI in 1996</p>	<p style="text-align: right;">Page 280</p> <p>1 A. Okay.</p> <p>2 MR. WINGET-HERNANDEZ: Let's go</p> <p>3 ahead and change the tape,</p> <p>4 take a quick break, and get</p> <p>5 right back into this. I'd</p> <p>6 like to go through it just</p> <p>7 as quickly as we can, but</p> <p>8 it will take a few minutes.</p> <p>9 THE VIDEOGRAPHER: We're going</p> <p>10 off the Record. This is</p> <p>11 the end of Tape No. 6. The</p> <p>12 time is 10:48 a.m.</p> <p>13 (Whereupon a brief recess was</p> <p>14 taken.)</p> <p>15 THE VIDEOGRAPHER: We're back</p> <p>16 on the Record. This is the</p> <p>17 beginning of Tape No. 7.</p> <p>18 The time is 10:59 a.m.</p> <p>19 BY MR. WINGET-HERNANDEZ:</p> <p>20 Q. Regarding Azathioprine,</p> <p>21 Ms. Waterer, have you had the responsibility</p> <p>22 for Azathioprine from the time that you came</p> <p>23 to Roxane Laboratories, Inc., the old Roxane</p> <p>24 Laboratories, Inc., until today?</p> <p>25 MS. WITT: Object to the form.</p>
<p style="text-align: right;">Page 279</p> <p>1 or was it launched subsequently?</p> <p>2 A. I think it was already</p> <p>3 launched.</p> <p>4 Q. Okay. Was it -- do you know</p> <p>5 whether it was a young drug in its product</p> <p>6 life cycle or whether it had been around a</p> <p>7 long time?</p> <p>8 A. I think it had launched shortly</p> <p>9 before I got there.</p> <p>10 Q. Are you aware that Azathioprine</p> <p>11 is a generic immunosuppressant that helps</p> <p>12 prevent, for example, kidney transplant</p> <p>13 patients from rejecting the donor's organs?</p> <p>14 A. That sounds familiar, yes.</p> <p>15 Q. Okay. Do you have any other</p> <p>16 understanding of what Azathioprine is used</p> <p>17 for?</p> <p>18 A. Not particularly. We don't</p> <p>19 focus on indications.</p> <p>20 Q. I understand. And I'm not</p> <p>21 going to question you at length about what</p> <p>22 their indications are. Really, my interest</p> <p>23 is just to try to just gain a very general</p> <p>24 understanding so that we can distinguish one</p> <p>25 of these drugs from the other.</p>	<p style="text-align: right;">Page 281</p> <p>1 A. No.</p> <p>2 Q. Have you had any kind of</p> <p>3 responsibility for Azathioprine at all?</p> <p>4 A. Yes.</p> <p>5 Q. Describe your responsibility</p> <p>6 for me respecting Azathioprine.</p> <p>7 A. I managed the product for the</p> <p>8 period of time -- I can't remember exactly</p> <p>9 when I took it over. It would have been</p> <p>10 probably within the first year that I was</p> <p>11 employed. I don't remember the particular</p> <p>12 time. And it would have continued up</p> <p>13 until -- again, I don't remember the</p> <p>14 particular time that it transitioned over. I</p> <p>15 would say two to four years ago.</p> <p>16 Q. Transitioned over to whom?</p> <p>17 A. My responsibility -- oh, I'm</p> <p>18 sorry. It would have been fully Lesli</p> <p>19 Poaletti's when my responsibilities changed.</p> <p>20 Q. Okay. I guess we probably</p> <p>21 ought to go into that. Because we didn't</p> <p>22 really talk about that, did we, about your</p> <p>23 responsibilities changing?</p> <p>24 A. I believe it was in the prior</p> <p>25 testimony that you didn't want to go over</p>

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<p style="text-align: right;">Page 282</p> <p>1 again.</p> <p>2 Q. Oh, okay.</p> <p>3 MR. WINGET-HERNANDEZ: Well, I</p> <p>4 apologize, Helen, I do want</p> <p>5 to go into it briefly.</p> <p>6 Q. When you say "when my</p> <p>7 responsibilities changed," what are you</p> <p>8 talking about?</p> <p>9 A. My responsibilities have</p> <p>10 evolved over time to be entirely future</p> <p>11 focused. I work with product development,</p> <p>12 identifying products that are going to be</p> <p>13 developed internally and launched far in the</p> <p>14 future. I have virtually nothing to do with</p> <p>15 existing product lines any longer. That</p> <p>16 occurred gradually over time.</p> <p>17 Initially, Lesli reported to me</p> <p>18 and over time was willing to take over the</p> <p>19 existing products. So now she has full</p> <p>20 responsibility for product from launch</p> <p>21 forward.</p> <p>22 Q. The transition that you say</p> <p>23 took place over time from your focusing on</p> <p>24 existing products to your focusing on future</p> <p>25 products, how long did that transition last,</p>	<p style="text-align: right;">Page 284</p> <p>1 white transition. It was gradual.</p> <p>2 Q. I understand. But to the</p> <p>3 extent that one would be looking for a</p> <p>4 pivotal moment, as you put it, that would</p> <p>5 define the end of your responsibilities</p> <p>6 toward existing products, would that be the</p> <p>7 pivotal moment?</p> <p>8 A. That would be the formal</p> <p>9 recognition of it. I don't recall if it had</p> <p>10 actually transitioned to that a while before</p> <p>11 and it just didn't change the reporting yet</p> <p>12 officially or what. It would be an</p> <p>13 approximation of the time.</p> <p>14 Q. Okay. And in order to be as</p> <p>15 precise as we can, do you know whether -- I</p> <p>16 mean, I understand you've testified that you</p> <p>17 don't know whether you may have ceased to</p> <p>18 have responsibilities with respect to</p> <p>19 existing products at some point prior to that</p> <p>20 pivotal moment, but do you have a sense of</p> <p>21 approximately how much time, say a month or a</p> <p>22 quarter or six months or a year before that</p> <p>23 pivotal moment you may have no longer had</p> <p>24 responsibilities for existing products?</p> <p>25 A. It was such an evolution and</p>
<p style="text-align: right;">Page 283</p> <p>1 approximately?</p> <p>2 A. In some ways, I would say from</p> <p>3 the day she was hired. In more official</p> <p>4 terms, I can't remember the exact transition</p> <p>5 date. But I would say somewhere between two</p> <p>6 and four years ago, my focus became much more</p> <p>7 increasingly devoted entirely to development,</p> <p>8 and her focus became increasingly devoted</p> <p>9 entirely to existing. There was a point when</p> <p>10 I believe that the structure changed, and she</p> <p>11 began reporting to Paul instead of to me to</p> <p>12 reflect the change. I don't know the</p> <p>13 specific data, though.</p> <p>14 Q. Do you know what year it</p> <p>15 occurred in?</p> <p>16 A. I don't recall. But somewhere</p> <p>17 two to four years ago.</p> <p>18 Q. Okay. So in order to find out</p> <p>19 when officially you no longer had</p> <p>20 responsibility for existing products, one</p> <p>21 would have to look to see when Lesli Poaletti</p> <p>22 was moved from under your supervision to</p> <p>23 Paul's supervision, correct?</p> <p>24 A. That would have been a pivotal</p> <p>25 moment with it. But it wasn't a black and</p>	<p style="text-align: right;">Page 285</p> <p>1 gradual process that that would be the</p> <p>2 closest we could pin it as to get that date.</p> <p>3 But with regards to specifics on an</p> <p>4 individual product, I don't know.</p> <p>5 Q. Okay. Then I need to ask the</p> <p>6 question in a sort of little bit more</p> <p>7 open-ended way, but I'll try to be clear:</p> <p>8 With respect to Azathioprine, is it fair to</p> <p>9 say that until -- that from the time that you</p> <p>10 joined the old Roxane Laboratories, Inc., in</p> <p>11 1996, roughly, until the time that Lesli</p> <p>12 Poaletti took over responsibility for</p> <p>13 existing products, you were the product</p> <p>14 manager for Azathioprine?</p> <p>15 A. We didn't have a title Product</p> <p>16 Manager for me ever. From the time Lesli</p> <p>17 came on board -- I can't remember. I think</p> <p>18 she came on board as Associate Product</p> <p>19 Manager and then Product Manager. When she</p> <p>20 first came on board, she took the liquids.</p> <p>21 And then as she developed into the position,</p> <p>22 she was given the responsibility for the</p> <p>23 solids. So it truly evolved.</p> <p>24 Q. Okay.</p> <p>25 A. Through the period of time that</p>

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<p>1 see whether it was approved via the ANDA or 2 the NDA process.</p> <p>3 MS. WITT: Now, let me just 4 clarify my objection. It's 5 not to it being branded or 6 generic, it's that you're 7 in effect asking this 8 Witness whether BIPI ever 9 sold calcium carbonate or 10 whether Ben Venue ever sold 11 calcium carbonate. And 12 she's not here designated 13 to have knowledge about 14 those. So when you ask her 15 did any other Boehringer 16 company ever sell it, 17 you're asking her for 18 information. And in her 19 capacity as a Roxane 20 witness, it would be 21 binding on Roxane. And I'm 22 not willing to let her 23 testify on what other 24 Boehringer companies may or 25 may not have sold, because</p>	<p>1 form that's not some kind of a calcium 2 carbonate that goes by a brand name.</p> <p>3 A. It may or may not be included 4 in formulations of other drugs. I'm not 5 aware of it.</p> <p>6 Q. All right. Then, specifically, 7 the drug calcium carbonate, are you aware of 8 any other Boehringer Ingelheim entity selling 9 calcium carbonate?</p> <p>10 A. As calcium carbonate?</p> <p>11 Q. As calcium carbonate, besides 12 the old and the new Roxane Laboratories, 13 Inc.?</p> <p>14 A. I don't recall it.</p> <p>15 Q. Okay. Now we're going to shift 16 back into your corporate designee deposition, 17 okay?</p> <p>18 A. Okay.</p> <p>19 MS. WITT: We should get hats.</p> <p>20 MR. WINGET-HERNANDEZ: We 21 should. I need one anyway.</p> <p>22 BY MR. WINGET-HERNANDEZ:</p> <p>23 Q. Do you recognize the generic 24 drug Ipratropium Bromide that's listed? 25 A. Yes.</p>
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<p>1 we clearly haven't 2 investigated that or tried 3 to prepare her for that for 4 this deposition.</p> <p>5 MR. WINGET-HERNANDEZ: Thank 6 you for clearing that up. 7 I apologize for making that 8 little explanation 9 necessary, but it was very 10 helpful.</p> <p>11 BY MR. WINGET-HERNANDEZ:</p> <p>12 Q. This question is not a question 13 of Boehringer Ingelheim Roxane. Right now, 14 I'm asking Judy Waterer: Do you know, Judy 15 Waterer, whether calcium carbonate was ever 16 sold by any other Boehringer Ingelheim entity 17 other than either the old Roxane 18 Laboratories, Inc., or the new Roxane 19 Laboratories, Inc.?</p> <p>20 A. Are you talking about calcium 21 carbonate broadly or are you talking about 22 calcium carbonate 1250 milligram per five ML 23 suspension.</p> <p>24 Q. Let's start by talking about it 25 broadly, calcium carbonate at all, in any</p>	<p>1 Q. And did either you or Lesli 2 Poaletti have responsibility generally for 3 Ipratropium Bromide from roughly the time 4 that you arrived in 1996 until the present?</p> <p>5 A. Yes.</p> <p>6 Q. Had Ipratropium Bromide 7 launched prior to your arrival in 1996?</p> <p>8 A. Yes.</p> <p>9 Q. Switching hats for a moment and 10 asking you about your personal knowledge: Do 11 you know whether Ipratropium Bromide was ever 12 sold as such?</p> <p>13 A. As Ipratropium Bromide?</p> <p>14 Q. As Ipratropium Bromide, yes, 15 ma'am, by any other Boehringer Ingelheim 16 entity?</p> <p>17 A. As Ipratropium Bromide, no.</p> <p>18 Q. All right. And to be clear, I 19 think what you're suggesting is that under 20 the brand name, it might have been sold by 21 some other Boehringer entity, correct?</p> <p>22 A. Correct.</p> <p>23 Q. And that brand name would have 24 been what? 25 A. Atrovent, A-T-R-O-V-E-N-T.</p>

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<p>1 Q. Do you recognize the drug --</p> <p>2 well, before I go on, Ipratropium Bromide is</p> <p>3 an inhalant that's -- it's a bronchodilator,</p> <p>4 correct?</p> <p>5 A. It could be. I don't</p> <p>6 specifically recall it's mechanism of action.</p> <p>7 Q. Do you recall that it was a</p> <p>8 drug that was used to treat chronic</p> <p>9 obstructive pulmonary disorder?</p> <p>10 A. Sounds familiar. I don't</p> <p>11 really recall.</p> <p>12 Q. Do you recognize lithium</p> <p>13 carbonate as a generic drug?</p> <p>14 A. Can you define what you mean by</p> <p>15 generic drug?</p> <p>16 Q. In general, a generic would be</p> <p>17 a drug that is approved through an ANDA</p> <p>18 process. I'm not talking --</p> <p>19 A. That's the definition you'd</p> <p>20 like me to use specific to this?</p> <p>21 Q. I'm trying to stick with what</p> <p>22 you told us yesterday.</p> <p>23 A. Okay.</p> <p>24 Q. Does that sound familiar?</p> <p>25 A. That's a general -- that's one</p>	<p>1 saying is the difference between being a sole</p> <p>2 source generic and being a multisource</p> <p>3 generic, right?</p> <p>4 A. That would work.</p> <p>5 Q. Is there a better description</p> <p>6 that you prefer?</p> <p>7 A. What's difficult is a number of</p> <p>8 our products straddle a unique definition and</p> <p>9 are very hard to put in a crystal-clear box.</p> <p>10 So that's as good of an explanation as we</p> <p>11 could work with on this one.</p> <p>12 Q. Is the particular Lithium</p> <p>13 Carbonate formulation that gives you pause in</p> <p>14 this context one of those products that you</p> <p>15 have that defies a crystal-clear</p> <p>16 categorization?</p> <p>17 A. I'm recalling that at certain</p> <p>18 points in time, Lithium Carbonate in one or</p> <p>19 another formulation, we were the sole</p> <p>20 supplier. I don't remember whether it was</p> <p>21 this particular one.</p> <p>22 Q. Is it fair to say that in the</p> <p>23 business, in the drug business, when you have</p> <p>24 a generic drug and you're the only supplier,</p> <p>25 that that's called a sole-source generic?</p>
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<p>1 general definition.</p> <p>2 Q. Okay. Well, let's get into</p> <p>3 this a little bit. First of all, does</p> <p>4 Lithium Carbonate, to your recollection --</p> <p>5 strike that.</p> <p>6 Is Lithium Carbonate a generic</p> <p>7 by that definition?</p> <p>8 A. I believe that's accurate.</p> <p>9 Q. To what extent is Lithium</p> <p>10 Carbonate perhaps not considered a generic?</p> <p>11 A. Lithium carbonate, we have in</p> <p>12 several different formations. In this,</p> <p>13 you're specifically asking about the capsule.</p> <p>14 I'm recalling that some of the Lithium</p> <p>15 Carbonates, we are the only Lithium Carbonate</p> <p>16 available in the U.S. So regardless of</p> <p>17 whether it was approved through the ANDA or</p> <p>18 NDA process, it would have been -- and I</p> <p>19 don't remember if this is the one that was --</p> <p>20 had multiple competitors or had no</p> <p>21 competitors, but there's a difference between</p> <p>22 defining it as how it's approved versus how</p> <p>23 it's marketed.</p> <p>24 Q. And the difference there, for</p> <p>25 marketing purposes, it sounds like you're</p>	<p>1 A. That's frequently used in a</p> <p>2 situation where there is an existing brand,</p> <p>3 and there is only one generic alternative.</p> <p>4 Q. This formulation of lithium --</p> <p>5 A. Wait a minute. Wait a minute.</p> <p>6 I can't talk to industry terms. I would say</p> <p>7 in that situation, we would call that</p> <p>8 probably sole generic. And sole-source</p> <p>9 generic, depending on the context, might mean</p> <p>10 that there was no brand, that it was the only</p> <p>11 one.</p> <p>12 Q. Okay. So are you suggesting to</p> <p>13 me that this formulation that you've been</p> <p>14 talking about of Lithium Carbonate that only</p> <p>15 Roxane had, that there was also no brand</p> <p>16 version of that formulation?</p> <p>17 A. I believe at points in time --</p> <p>18 this is going way back.</p> <p>19 Q. Okay.</p> <p>20 A. I think a brand may have exited</p> <p>21 the market, leaving us the only -- I would</p> <p>22 really have to dig back in and go through the</p> <p>23 specifics.</p> <p>24 Q. Thank you. We'll just move on.</p> <p>25 Did either you or -- well, let me back up.</p>

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<p style="text-align: right;">Page 302</p> <p>1 Q. Well, can you tell me what you 2 think it's indicated for? 3 A. I'm thinking that it was to 4 treat wasting disorder in AIDS patients, but 5 I'm not certain. I don't know if I'm mixing 6 it up with something else. 7 Q. And is that because it's an 8 appetite stimulant? 9 A. I didn't really get into the 10 mechanism of it. 11 Q. Well, isn't Marinol sort of 12 unique and interesting and in some ways 13 controversial? 14 MS. WITT: Object to the form. 15 A. I was not the brand manager. I 16 don't know a whole lot about it, so . . . 17 Q. Okay. Well -- 18 A. If you'd get more specific, I 19 can see if it triggers a memory. 20 Q. Sure, sure. You understand 21 that Marinol is a synthetic form of THC, 22 right? 23 A. Correct. 24 Q. And THC is the active aspect of 25 the elicit drug marijuana, right?</p>	<p style="text-align: right;">Page 304</p> <p>1 this branded product? 2 A. No. 3 Q. Who was responsible for 4 Marinol? 5 A. I don't recall. 6 Q. The next drug on the list, do 7 you see it there? 8 A. Let me go backwards. 9 Q. Yes, ma'am. 10 A. The branded products, 11 ultimately, at a point in time -- all of the 12 product managers reported through Gary 13 Ellexson, who was in charge of all of the 14 branded product managers. I don't remember 15 which specific product manager had Marinol. 16 But for a period of time, it would have gone 17 through Gary Ellexson at Roxane. 18 Q. Oh, okay. So what you're doing 19 right now is you're helping me with a little 20 bit more information about my last question 21 that we didn't have a moment ago? 22 A. Yes. 23 Q. Did Gary Ellexson ever report 24 to you? 25 A. No.</p>
<p style="text-align: right;">Page 303</p> <p>1 A. Correct. One of them, 2 probably. 3 Q. I beg your pardon? 4 A. It's probably one of the active 5 things in it. 6 Q. Right, right. It's the main 7 one that people talk about? 8 A. Correct. 9 Q. All right. And so does that -- 10 does remembering that trigger any personal 11 memory that you have of discussions at Roxane 12 Laboratories, Inc., about what this synthetic 13 component of marijuana was designed to treat? 14 A. I think I mentioned earlier 15 that, to the best of my recollection, it was 16 to treat wasting disease. 17 Q. But you have no recollection, 18 as you sit here today, of why that was the 19 case? 20 A. I don't recall, as you said, 21 whether it's an appetite stimulant or whether 22 it impacts the metabolism or -- I really 23 don't recall. 24 Q. In any case, did either you or 25 Lesli Poaletti ever have responsibility for</p>	<p style="text-align: right;">Page 305</p> <p>1 Q. Was he -- was Gary Ellexson 2 within Roxane Laboratories, Incorporated, 3 old? 4 A. Yes. 5 Q. And this was prior to the 6 transition of branded products to Boehringer 7 Ingelheim Pharmaceuticals, Incorporated? 8 A. I believe it was prior and 9 after. 10 Q. So the gentleman stayed at 11 Roxane Laboratories, Inc., is what you're 12 saying? 13 A. To the best of my recollection, 14 he moved with the products. 15 Q. Oh, okay. To be clear: I 16 think what you're suggesting is -- and please 17 correct me if I'm wrong -- that the branded 18 product Marinol was within the product line 19 of the old Roxane Laboratories, Inc., at some 20 point during your tenure there, correct? 21 A. Yes. 22 Q. But that today, it is no 23 longer? 24 A. Correct. 25 Q. Do you recall when that</p>

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<p>1 (A brief recess was taken.)</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of Tape No. 11.</p> <p>4 We're on the Record at</p> <p>5 4:56 p.m.</p> <p>6 BY MR. WINGET-HERNANDEZ:</p> <p>7 Q. Ms. Waterer, is it fair to say</p> <p>8 that Boehringer Ingelheim Roxane knows and</p> <p>9 understands that the AWP prices that it</p> <p>10 reports for its products are much higher than</p> <p>11 any price that it would ever expect for a</p> <p>12 retail pharmacy to pay?</p> <p>13 MS. WITT: Object to the form.</p> <p>14 A. I don't know. I would agree</p> <p>15 that the AWP is not a price that Roxane</p> <p>16 charges any customer and that it is higher</p> <p>17 than what I would expect them to generally --</p> <p>18 a retail store to generally pay.</p> <p>19 Q. I'd like to get a little</p> <p>20 housekeeping detail sort of out of the way.</p> <p>21 We had talked earlier about these documents,</p> <p>22 and I can never remember the range. I think</p> <p>23 it's Exhibit 22 through Exhibit 51. What I'm</p> <p>24 going to do here is, I'm going to show you</p> <p>25 what's been marked Plaintiffs' Exhibit No. 28</p>	<p>1 Q. Do you recognize the author?</p> <p>2 A. Yes.</p> <p>3 Q. Well, who is it?</p> <p>4 A. Jan Kirby.</p> <p>5 Q. Is that a person who is</p> <p>6 authorized to communicate with Red Book in</p> <p>7 order to make sure that Red Book had the</p> <p>8 information that Roxane wanted it to have in</p> <p>9 connection with the publication of Roxane's</p> <p>10 published prices?</p> <p>11 A. Yes.</p> <p>12 Q. And finally, if you'll turn</p> <p>13 to --</p> <p>14 A. Can I make a comment on this?</p> <p>15 Q. Yes. Go ahead.</p> <p>16 A. While the original</p> <p>17 communication came from us, there appears to</p> <p>18 be a lot of notes on it that I do not believe</p> <p>19 were on what we sent them.</p> <p>20 Q. That's fair. Go ahead and look</p> <p>21 at Bates No. 13876. That is the beginning of</p> <p>22 a fairly voluminous document that has a</p> <p>23 title, right, Product Verification Form, or</p> <p>24 something like that?</p> <p>25 A. Product Listing Verification,</p>
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<p>1 and ask you a couple of questions about it.</p> <p>2 And after I get your answers, then I'll make</p> <p>3 another statement on the Record.</p> <p>4 Do you recognize Plaintiffs'</p> <p>5 Exhibit No. 28 as correspondence between</p> <p>6 Roxane Laboratories, Inc., and one of the</p> <p>7 pricing compendia, in this case Red Book?</p> <p>8 (Whereupon Plaintiffs' Roxane</p> <p>9 Waterer No. 28 was marked for</p> <p>10 identification and attached</p> <p>11 hereto.)</p> <p>12 (Witness reviewed document.)</p> <p>13 A. Yes.</p> <p>14 Q. And if you'll turn for me to</p> <p>15 page 13873, that is a letter from Roxane to</p> <p>16 Red Book, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it references both pricing</p> <p>19 corrections and deletions of products and</p> <p>20 other alterations to the product listing that</p> <p>21 Red Book carries in its published product,</p> <p>22 correct?</p> <p>23 (Witness further reviewed</p> <p>24 document.)</p> <p>25 A. Yes.</p>	<p>1 Medical Economics.</p> <p>2 Q. Okay. Do you recognize that</p> <p>3 sort of document as the thing that we were</p> <p>4 talking about or that you were talking about</p> <p>5 earlier wherein the pricing compendia would</p> <p>6 ask Roxane to check to make sure that the</p> <p>7 prices that it was going to publish or that</p> <p>8 it intended to publish in its publication</p> <p>9 were the prices that Roxane wanted to be</p> <p>10 published?</p> <p>11 A. With a minor correction. My</p> <p>12 understanding is this is what they were</p> <p>13 currently publishing. And we had a chance to</p> <p>14 go back and correct anything that they were</p> <p>15 publishing incorrectly.</p> <p>16 Q. Okay. And really my question</p> <p>17 goes to whether you recognize that this</p> <p>18 product verification form, or whatever it's</p> <p>19 called, was the instrument that you used in</p> <p>20 the context of the Red Book to verify prices?</p> <p>21 A. In this case, yes.</p> <p>22 Q. Does it comport with Boehringer</p> <p>23 Ingelheim Roxane, Inc.'s, knowledge and</p> <p>24 recollection that this was the median that</p> <p>25 was used in the normal course to accomplish</p>

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<p>1 that purpose?</p> <p>2 A. I'm not sure how frequently it</p> <p>3 occurred to call it normal. It is something</p> <p>4 that I'm familiar with that we at least</p> <p>5 worked with a couple of times.</p> <p>6 Q. Certainly not unusual.</p> <p>7 A. Correct.</p> <p>8 MR. WINGET-HERNANDEZ: Okay.</p> <p>9 I'm not going to ask any</p> <p>10 more than that about the</p> <p>11 remaining documents in the</p> <p>12 range that I just</p> <p>13 described, probably much</p> <p>14 less, and certainly much</p> <p>15 less regarding those</p> <p>16 documents that turn out not</p> <p>17 to have that form attached</p> <p>18 to it. And I'm stating</p> <p>19 this for the Record so that</p> <p>20 you can look through those</p> <p>21 documents and satisfy</p> <p>22 yourselves that between now</p> <p>23 and tomorrow morning that</p> <p>24 you can testify in response</p> <p>25 to my questions.</p>	<p>1 opposed to -- I thought we</p> <p>2 were just going to go</p> <p>3 through and look and say,</p> <p>4 Bates Nos. X, Y, and Z are</p> <p>5 correspondence. But if</p> <p>6 you've got more substantive</p> <p>7 questions, I'm afraid we're</p> <p>8 probably going to have to</p> <p>9 go through them document by</p> <p>10 document.</p> <p>11 MR. WINGET-HERNANDEZ: I'm</p> <p>12 guilty as charged.</p> <p>13 Whenever I get a document</p> <p>14 and I have a witness to</p> <p>15 tell me about it, I can't</p> <p>16 resist asking all of these</p> <p>17 damn questions, but I . . .</p> <p>18 MS. WITT: Why don't we just</p> <p>19 try to do it tonight so</p> <p>20 we're finished. Because I</p> <p>21 really don't want to take</p> <p>22 too much of Massachusetts's</p> <p>23 time tomorrow. And this</p> <p>24 doesn't sound, based on</p> <p>25 those questions, like this</p>
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<p>1 MS. WITT: Okay. If the</p> <p>2 homework assignment is</p> <p>3 really just to have a</p> <p>4 chance for her to look at</p> <p>5 them -- because the only</p> <p>6 question that I've heard</p> <p>7 that we could answer going</p> <p>8 through, because the</p> <p>9 questions were kind of</p> <p>10 document specific, other</p> <p>11 than in this correspondence</p> <p>12 between Roxane and Red</p> <p>13 Book, which we can</p> <p>14 certainly verify. But</p> <p>15 other than that, I'm not</p> <p>16 sure there's other specific</p> <p>17 questions that I'll</p> <p>18 necessarily be able to</p> <p>19 identify for Ms. Waterer</p> <p>20 overnight to say easily.</p> <p>21 We might have to go</p> <p>22 through the documents one</p> <p>23 by one if you want to ask</p> <p>24 about specific document-</p> <p>25 related questions as</p>	<p>1 is going to be a forty-five</p> <p>2 minute exercise.</p> <p>3 MR. WINGET-HERNANDEZ: Let's</p> <p>4 whip through it. I do have</p> <p>5 a couple of other documents</p> <p>6 that I wanted to ask</p> <p>7 questions about, but maybe</p> <p>8 I can just leave those</p> <p>9 until in the morning.</p> <p>10 BY MR. WINGET-HERNANDEZ:</p> <p>11 Q. I'll show you what's been</p> <p>12 marked Plaintiffs' Exhibit No. 22. Can you</p> <p>13 tell me --</p> <p>14 MS. WITT: At the risk of</p> <p>15 getting into the camera</p> <p>16 realm, and I want to at</p> <p>17 least be able to see the</p> <p>18 document as the Witness is</p> <p>19 looking at it.</p> <p>20 Q. Can you identify that document</p> <p>21 as correspondence between Roxane and Red</p> <p>22 Book, Ms. Waterer?</p> <p>23 (Whereupon Plaintiffs' Roxane</p> <p>24 Waterer No. 22 was marked for</p> <p>25 identification and attached</p>

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1 understand your position.
2 MR. WINGET-HERNANDEZ: I have a
3 feeling, Helen, that you
4 and I are going to be able
5 to work things out.

6 MS. WITT: Let's hope so.

7 MR. WINGET-HERNANDEZ: Thank
8 you for taking your time to
9 appear here today, and
10 thank you also for going a
11 bit beyond the time that we
12 were originally scheduled
13 to go.

14 THE VIDEOGRAPHER: This is the
15 end of Tape No. 11 and the
16 conclusion of Day 2 in the
17 continuing deposition of
18 Judy Waterer.

19 We're going off the
20 Record at 5:41 p.m.
21 (Whereupon the continuing
22 videotaped deposition of JUDY
23 WATERER, VOLUME II recessed at
24 5:41 p.m.)
25

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1 * * * * *

2 REPORTER'S CERTIFICATE

3 * * * * *

4 STATE OF ALABAMA)
5 COUNTY OF MONTGOMERY)

6 I, Cornelia J. Baker, Certified Court
7 Reporter, Certified Shorthand Reporter, and
8 Notary Public in and for the State of
9 Alabama at Large, do hereby certify that on
10 Thursday, May 10, 2007, pursuant to notice
11 and stipulation on behalf of the Plaintiffs,
12 I reported the videotaped deposition of JUDY
13 WATERER, VOLUME II, who was first duly sworn
14 by me to speak the truth, the whole truth,
15 and nothing but the truth, in the matter of
16 STATE OF ALABAMA, Plaintiff, versus ABBOTT
17 LABORATORIES, INC., et al., Defendants,
18 Civil Action No. 2005-219, now pending in
19 the Circuit Court of Montgomery County,
20 Alabama; and STATE OF HAWAII, Plaintiff,
21 versus ABBOTT LABORATORIES, INC., et al.,
22 Defendants, Civil No. 06-1-0720-04 EEH, now
23 pending in the Circuit Court of the First
24
25

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1 Circuit, State of Hawaii; and in the matter
2 of THE COMMONWEALTH OF MASSACHUSETTS,
3 Plaintiff, versus MYLAN LABORATORIES, INC.,
4 et al., Defendants, C.A. No. 03-11865 PBS,
5 now pending in the United States District
6 Court, District of Massachusetts; and that
7 the foregoing pages contain a true and
8 accurate transcription of the examination of
9 said witness by counsel for the parties set
10 out herein; that the reading and signing of
11 said deposition was not waived by witness
12 and counsel for the parties.

13 I further certify that I am neither of
14 kin nor of counsel to the parties to said
15 cause, nor in any manner interested in the
16 results thereof.

17 This the 24th day of May, 2007.
18
19
20

21 Cornelia J. Baker
22 Certified Shorthand Reporter,
23 Certified Court Reporter and
24 Notary Public for the
25 State of Alabama

My Commission expires 6/9/08.

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1 IN THE CIRCUIT COURT OF
2 MONTGOMERY COUNTY, ALABAMA

3 STATE OF ALABAMA,
4 Plaintiff,

5 vs. CIVIL ACTION NO. 2005-219
6 ABBOTT LABORATORIES, INC.,
7 et al.,

8 Defendants.

9 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
10 STATE OF HAWAII

11 STATE OF HAWAII,
12 Plaintiff,

13 vs. CIVIL NO. 06-1-0720-04 EEH
14 ABBOTT LABORATORIES, INC.,
15 et al.,

16 Defendants.

17 UNITED STATES DISTRICT COURT
18 DISTRICT OF MASSACHUSETTS

19 THE COMMONWEALTH OF MASSACHUSETTS,
20 Plaintiff,

21 vs. C.A. NO. 03-11865 PBS
22 MYLAN LABORATORIES, INC.,
23 et al.,

24 Defendants.

25 * * * * *

VOLUME III

1 The videotaped deposition of JUDY WATERER,
2 VOLUME III, was taken before Cornelia J.
3 Baker, Certified Court Reporter and
4 Certified Shorthand Reporter, as
5 Commissioner, on Friday, May 11, 2007,
6 commencing at approximately 8:42 a.m., in
7 the law offices of Kirkland & Ellis, 153
8 East 53rd Street, New York, New York
9 pursuant to the stipulations set forth
10 herein.
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<p>1 responding for both of those -- that one 2 entity that carried over? 3 A. If it's limited to pre-2005, I 4 believe that the split didn't occur -- 5 Q. Okay. 6 A. -- legally. I'm not positive, 7 but I think it was '05. 8 Q. Direct your attention to page 9 three, which has -- which is the attachment, 10 Matters on Which Roxane Shall Testify on 11 Deposition Pursuant to Federal Rules of Civil 12 Procedure 30(b)(6); do you see that? 13 A. Yes. 14 Q. And the first item is Roxane's 15 legal relationship to any of its corporate 16 affiliates. Just explain to the Jury what 17 the scope of your understanding, your 18 knowledge, of that topic is. 19 A. Actually, I was able to 20 clarify. And where I was not confident using 21 the term "subsidiary" before, it is indeed 22 subsidiary. 23 Q. When you say "it is a 24 subsidiary" -- 25 A. Roxane Laboratories, Inc.</p>	<p>1 Roxane for the purposes of this deposition -- 2 and its sister corporations? 3 A. Yes. 4 Q. Okay. I understand that you 5 are also going to be testifying as a 6 knowledgeable person with regard to Paragraph 7 3? 8 A. Yes. 9 Q. And let me direct your 10 attention now -- we've spoken about Paragraph 11 4 with regard to the transactional data. And 12 we'll get to specific records, other specific 13 records, later in the deposition, so I'm 14 going to skip that for now. 15 With regard to the topic of 16 Paragraph No. 5, is that a topic with which 17 you are familiar? 18 A. Yes. 19 Q. And do you feel today that you 20 can give a complete, knowledgeable, and 21 binding -- complete and knowledgeable answers 22 with regard to how Roxane determines what it 23 will report as AWP or WAC or other price? 24 A. If I can, again, specify that 25 my area of knowledge on this is limited to</p>
Page 523	Page 525
<p>1 Q. So Roxane Laboratories, Inc., 2 is a subsidiary of -- 3 A. -- BI Corporation. 4 Q. Boehringer Ingelheim 5 Pharmaceuticals, Inc.; is that correct? 6 A. No. 7 Q. Okay. 8 A. Boehringer Ingelheim 9 Pharmaceuticals, Inc., is also, I believe -- 10 I'm not -- I believe that that also would be 11 a subsidiary of BI Corporation. But that's 12 not an area I'm prepared for, so . . . 13 Q. Boehringer Ingelheim 14 Corporation is the corporate parent of Roxane 15 Laboratories, Inc.; is that correct? 16 A. Yes. 17 Q. Okay. Let me direct your 18 attention to Paragraph 2, Roxane's 19 operational relationship to any of its 20 corporate affiliates; do you see that? 21 A. Yes. 22 Q. Do you feel that you are 23 knowledgeable of the subject matter of the 24 operational relationship between Roxane 25 Laboratories, Inc. -- which I'm going to call</p>	<p>1 the multisource product Line. 2 MS. WITT: I should have 3 included that in the carve- 4 out. 5 MR. HEIDLAGE: Okay. 6 BY MR. HEIDLAGE: 7 Q. Let me direct your attention 8 down to Paragraph 8 and just ask you to read 9 that. 10 By the way, you have seen this 11 before; is that correct? 12 A. Yes. 13 Q. Let me direct your attention to 14 Paragraph 8. 15 Are you prepared to speak to 16 the subject matter of how and the extent to 17 which Roxane's procedures with regard to 18 reporting its AWP, WAC, or other price to 19 First Databank with regard to multisource 20 products is different from the procedures 21 that it used with regard to any other 22 products? 23 A. I'm not sure I understand the 24 question. 25 Q. Well, I'm just trying to deal</p>

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<p>1 To distinguish -- I think it's</p> <p>2 really important to understand the generics</p> <p>3 are not driven by the traditional marketing,</p> <p>4 what one might think of as a</p> <p>5 feature-and-benefit piece and going in and</p> <p>6 creating this. What we tended to do on most</p> <p>7 of the new products was create a one-page ad</p> <p>8 that was what we would call an awareness ad,</p> <p>9 which typically had a picture of the product</p> <p>10 on it and "now available" on a banner across</p> <p>11 the top.</p> <p>12 Depending on the type of drug</p> <p>13 it was, requirements may or may not have</p> <p>14 required us to include the package insert on</p> <p>15 the back page. And for the most part, that</p> <p>16 was the only thing that a customer would have</p> <p>17 seen if a sales representative had been</p> <p>18 interested in getting it to them. Normally,</p> <p>19 they didn't, because it really didn't add any</p> <p>20 value to the conversation.</p> <p>21 Q. When you say -- I mean, you</p> <p>22 were not directly involved in sales calls</p> <p>23 most of the time; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. I mean, so how did you become</p>	<p>1 large blocks of pharmaceutical business. In</p> <p>2 other words, the buyer or purchaser for a</p> <p>3 buying group, the buyer or purchaser for a</p> <p>4 warehousing chain, someone who was in that</p> <p>5 role.</p> <p>6 Q. I think yesterday you gave some</p> <p>7 examples of each of these customers. But</p> <p>8 just so the Jury can understand who we are</p> <p>9 talking about, with regard to warehousing</p> <p>10 chains, could you just give some examples of</p> <p>11 what a warehousing chain might -- I mean,</p> <p>12 what kind of companies are warehousing</p> <p>13 chains?</p> <p>14 A. It might be a Rite Aid,</p> <p>15 a Walgreen's, a Wal-Mart, a CVS, that type of</p> <p>16 ...</p> <p>17 Q. In other words, the large chain</p> <p>18 pharmacies often would have their own</p> <p>19 warehouses, and so you would call those a</p> <p>20 warehousing chain, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the person that you would</p> <p>23 target for a sales call with regard to -- or</p> <p>24 for marketing or sales and so on, would be</p> <p>25 the buyer for the chain; is that correct?</p>
Page 535	Page 537
<p>1 familiar and able to testify with regard to</p> <p>2 the kind of conversation that would occur</p> <p>3 with your customers?</p> <p>4 A. During the sales meetings,</p> <p>5 sales representatives would review what was</p> <p>6 going on. They would have individual account</p> <p>7 reviews.</p> <p>8 I did occasionally ride with a</p> <p>9 sales representative. And their management</p> <p>10 team took great pains to make me aware of any</p> <p>11 misinformation I might have with regard to</p> <p>12 the willingness of their people or the</p> <p>13 appropriateness of the sales pieces.</p> <p>14 And in terms of them not using</p> <p>15 the sales pieces, I can pretty much guarantee</p> <p>16 that, because we typically only sent out 25</p> <p>17 or 50. And they usually got thrown away and</p> <p>18 weren't reordered, so ...</p> <p>19 Q. Could you describe for the Jury</p> <p>20 who the real customers are for Roxane and</p> <p>21 the -- in its sales business?</p> <p>22 A. I guess the simplest</p> <p>23 explanation would be a relatively limited</p> <p>24 number of individuals who had the authority</p> <p>25 to make purchasing decisions for moderately</p>	<p>1 A. It would be the buyer that was</p> <p>2 responsible for multisource products at the</p> <p>3 chain. Sometimes they separated it;</p> <p>4 sometimes they were together.</p> <p>5 Q. And generally, how many of</p> <p>6 those kinds of customers are there? How many</p> <p>7 people are there that you're dealing with?</p> <p>8 A. At the large warehousing chain?</p> <p>9 Q. Yes.</p> <p>10 A. Five or six. Then there's a</p> <p>11 mid tier, but there's not a whole lot of</p> <p>12 customers.</p> <p>13 Q. And just as a general matter,</p> <p>14 can you explain to the Jury what a sales call</p> <p>15 with regard to Roxane's drugs would focus on</p> <p>16 when you were approaching the buyer for a</p> <p>17 large chain?</p> <p>18 A. It would most likely depend on</p> <p>19 the time of year. Some of the chains had</p> <p>20 like an open-bid cycle, where at a certain</p> <p>21 period, they would put out a bid and ask all</p> <p>22 of the companies to respond and then decide</p> <p>23 who they would award. So there were calls</p> <p>24 during that time period trying to determine</p> <p>25 how our bid was being perceived; whether we</p>

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<p>1 were in the running, if there were specific 2 products that we had to lower price on, 3 getting any information that we could. 4 Another type of call, a 5 maintenance call, would be touching base with 6 the customer to review the contract and their 7 buying patterns, to go over service levels 8 and make sure that we were providing them 9 with everything that they would expect, take 10 care of any problems. 11 Along with that, at times 12 intermittently, a customer may indicate that 13 for one reason or another he's thinking of 14 switching vendors and mention that there may 15 be an opportunity for an individual drug. At 16 which point they would negotiate as to 17 whether or not Roxane might be in the running 18 to be selected for the change. Mostly that 19 type of thing. 20 Q. What kind of issues would 21 determine whether or not Roxane was in the 22 running for supplying a multisource drug? 23 MS. WITT: Object to the form 24 of the question. 25 A. I can tell you that our sales</p>	<p>1 accept that as a given and differentiate 2 among relationship, ease of doing business, 3 and just experience. 4 Q. At any time in these sales 5 calls, have you been -- strike that. 6 Have you ever been informed 7 that at any time in these sales calls to 8 chain warehouse buyers that the customer was 9 concerned about your average wholesale price? 10 A. I can recall one specific time 11 period vividly. There may have been others. 12 Q. And is the one time period that 13 you're speaking about the circumstance with 14 regard to Furosemide that you testified about 15 either yesterday or the day before? 16 A. Yes. 17 Q. Any others? 18 A. Not that I recall. There -- I 19 would have little doubt that there may have 20 been other occasions. 21 Q. And why would the Average 22 Wholesale Price that you're reporting have 23 any significance for the customer? 24 A. The customers let us know that 25 many of their reimbursement programs may be</p>
Page 539	Page 541
<p>1 force has told us comments from the customers 2 about what's important to them. And the most 3 important thing that we hear from the sales 4 force is ease of doing business. In other 5 words, when they order the product, is it 6 available; is it shipped without being 7 broken; does it show up when it's supposed 8 to; is there virtually no backorders; when 9 there's any kind of contract or pricing 10 questions or disputes, is it easy to 11 communicate back and forth? 12 The next one would be really 13 the history and experience with the company, 14 if they've developed a comfort level. 15 Probably, one of the lower 16 things on the priority would be price. And 17 although that sounds counterintuitive, in our 18 business, almost any company will match 19 almost any comp -- it's a total commodity 20 business. So it's almost as if price is a 21 given, whatever the market price is is what 22 you supply the product as. And most 23 companies, until that comes below cost of 24 goods, will meet that price. 25 So the customer is going to</p>	<p>1 tied to AWP so that if our AWP -- the 2 customer is trying to make the awards based 3 on the bid price. And if a company's AWP is 4 significantly out of line with all of the 5 competitors, by picking the lowest bid price, 6 he could be making a decision that would be 7 less profitable for his company. So in the 8 instances where customers would bring that 9 up, it would become part of the sales call. 10 But most -- most frequently, 11 AWP's really fall within a very normal average 12 range, so that it's rarely a consideration or 13 brought up in the conversation with the sales 14 rep. It's as if there's an exception or 15 something unusual about it that it might 16 become a discussion point. 17 Q. At any time did -- in your 18 experience, was there a situation in which 19 you as the Director of Marketing, or head of 20 marketing, had concluded that the -- your 21 AWP's were higher than your competitors and, 22 therefore, you had a competitive advantage 23 against your competitors, and you instructed 24 your salespeople to point that out to the 25 customers?</p>

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<p>1 group was dismantled. The individual, Chris 2 Marsh, who had been involved in contracting 3 with Roxane, relocated to the central place 4 in Connecticut and took on the role of doing 5 contracts, of doing our Roxane contracting 6 from a different site. 7 Q. Okay. And I'm sorry I don't 8 recall. I know that you've testified about 9 Mr. or Mrs. Marsh before. Is that a male or 10 a female? 11 A. Oh, female. 12 Q. Did Mrs. Marsh -- is she now 13 located in Connecticut? 14 A. Yes. 15 Q. And she's an employee of an 16 entity other than Roxane Laboratories, 17 Incorporated; is that correct? 18 A. Correct. 19 Q. Okay. Is she a lawyer, by the 20 way? 21 A. I don't believe so. 22 Q. Okay. So is it fair to say 23 that the contract administration function for 24 Roxane is now being carried out by either its 25 corporate parent or one of its affiliates?</p>	<p>1 individual has changed over the years. 2 Q. Okay. So it's a function 3 that's there -- 4 A. Yes. 5 Q. -- and different individuals 6 have performed that function; is that 7 correct? 8 A. Yes. 9 Q. And, in general, what kinds of 10 financial services do they perform for you? 11 A. They communicate our budgets, 12 compile them. They access the sales reports 13 and put them together into a format that's 14 digestible and send that to us in some cases 15 on a weekly basis. I would call it basic 16 financial housekeeping. 17 Q. Are there certain financial 18 things that are done by Roxane Laboratories, 19 Incorporated, and then others that are 20 performed under the service contract or 21 services arrangement that you have with your 22 sister corporation, period? 23 A. Again, it's varied over the 24 time period. In '96 when I came on board, we 25 had in-house finance that what they provided</p>
Page 563	Page 565
<p>1 A. By a sister company, yes. 2 Q. Okay. And that's Boehringer 3 Ingelheim Pharmaceuticals, Incorporated; is 4 that correct? 5 A. I believe that's who she 6 reports through. I'm not positive of her 7 line. We have a service -- I believe even 8 today we have a service contract with them 9 for the services that they provide to us. 10 Q. Are there other services that 11 your sister corporation provides to Roxane? 12 A. Some of our financial work is 13 done, and I -- again, I believe it's -- I 14 believe the individual is BIPI, but I'm not 15 sure if he's BIPI or another individual. To 16 the best of my knowledge, it's BIPI. 17 Q. What kind of services does -- 18 well, strike that. 19 First of all, does this person 20 that you're referring to have a name? I'm 21 sure he has a name. Do you know the name of 22 the person who provides these services? 23 A. There's been an individual in 24 Connecticut that provides us assistance with 25 our financial numbers. The name of the</p>	<p>1 was moved to Connecticut. I don't remember 2 the year. Probably sometime around or a 3 little bit before the time the contracting 4 moved. Things were -- there was an 5 initiative to centralize some of the 6 functions. 7 Q. Do the employees in -- at 8 Roxane have either Internet or some other 9 kind of access to financial records, I mean, 10 for the day-to-day business? 11 MS. WITT: Object to the form 12 of the question. 13 Q. I'm sorry. I'm going to strike 14 the question, and I'm going to start over 15 again. Actually, I think I'm going to leave 16 it at this point. 17 In the -- with regard to the 18 contracts that Roxane has with its 19 wholesalers, do you have direct input into 20 any of the particular terms? 21 A. Again, things have varied over 22 time. In the -- you know, when I first came 23 on board, I don't think I had ever seen one. 24 At various times, portions of them may have 25 been presented where the wholesalers were</p>

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<p>1 pretty much dictating what the terms would be 2 in order to participate that would have -- I 3 don't remember the specifics -- but been 4 outside of what we would accept as normal 5 customary business, and we wouldn't want to 6 do that.</p> <p>7 So the people that were 8 responsible for reviewing contracts would 9 highlight that and say, These are differences 10 that are jumping out. Do you want to cave on 11 a couple of them, keep a couple, how do you 12 want to proceed? And depending on the 13 decisions that we made, they would amend the 14 contract to reflect what we were willing to 15 do.</p> <p>16 Q. Who was responsible for 17 negotiating the financial terms of the 18 contracts with the wholesalers?</p> <p>19 A. That would have been a 20 combination of the sales marketing and the 21 contract. Contracting group has a broad 22 guideline that if it falls within that, they 23 can go ahead and send it out. If it's 24 outside of that, then it would have to go 25 through various levels of the authority for</p>	<p>1 Bates No. RLI-TX25155 through RLI-TX25174. 2 (Whereupon Plaintiffs' Roxane 3 Waterer No. 71 was marked for 4 identification and attached 5 hereto.) 6 (Witness reviewed document.) 7 BY MR. HEIDLAGE 8 Q. And, Ms. Waterer, I'd just like 9 to, you know, point out to you or alert you 10 to the fact that the agreement appears to be 11 between Cardinal Health Provider Pharmacy 12 Services and Boehringer Ingelheim 13 Pharmaceuticals, Inc. Do you see that? 14 A. Yes. 15 Q. Is it possible that -- and you 16 may not now the answer to this -- and I know 17 this is beyond the scope of at least this 18 phase of the deposition -- but would -- can 19 you tell from the agreement whether Cardinal 20 can purchase or does purchase Roxane's drugs 21 pursuant to this agreement? 22 A. Is there a list of drugs 23 attached? 24 Q. I don't know. 25 MS. WITT: Exhibit A. It's on</p>
Page 567	Page 569
<p>1 change. And over time, those levels and the 2 individuals involved has changed and evolved 3 with the business.</p> <p>4 Q. Now, just directing your 5 attention to the document that's in front of 6 you. I think you've said you've never seen 7 it before, but is that the kind of contracts 8 that you would have with a wholesaler for a 9 source program?</p> <p>10 MS. WITT: Object to the form 11 of the question.</p> <p>12 A. Without taking a good hour to 13 look it over, I really couldn't answer on it.</p> <p>14 It appears to be a Cardinal 15 letterhead of a standard agreement. So if we 16 take it on face value that this is what 17 Cardinal may have presented as an agreement, 18 I don't know how else to answer it unless you 19 want me to take the time to study it.</p> <p>20 Q. Before we go any further, then, 21 I'm going to ask that we mark that as a next 22 exhibit for identification.</p> <p>23 Just for the Record, Exhibit 71 24 is a document that is marked, Highly 25 Confidential, Attorneys' Eyes Only. It is</p>	<p>1 page 25160. 2 MR. HEIDLAGE: Thank you. 3 A. These are all BIPI products. 4 Q. Have they always been BIPI 5 products? 6 A. Yes -- or, let me clarify that. 7 To my knowledge, I haven't known them to be 8 somebody else's. Whether BIPI got them from 9 somebody else and then later marketed them, I 10 don't know. They're all BIPI brand names. 11 Q. Let me show you a document 12 that -- 13 MR. HEIDLAGE: Well, first of 14 all, let's go ahead and 15 mark that as the next 16 exhibit. 17 I apologize. I do 18 have copies. Let me give 19 them to you. And my 20 objective today is to give 21 out all the copies I can, 22 so I don't have to carry 23 them back. 24 MS. WITT: Can we go off the 25 Record for a second?</p>

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<p style="text-align: right;">Page 594</p> <p>1 included is a membership affiliation, the 2 price, and the customer identification: What 3 when you say -- what is the price that you 4 are referring to? 5 A. I think on this that I need to, 6 again, say that I am not the person that has 7 the information about the transaction. So 8 I'm talking second, third, fourth hand 9 general understanding of what's occurring. 10 And I think if you want to get into very 11 specific details about the information that's 12 included in an EDI transmission -- if EDI is 13 even the proper vehicle that it comes 14 through -- that my understanding is that 15 someone else is going to talk to that. 16 Q. Isn't your agreement with the 17 wholesaler that if a customer who has a 18 contract with Roxane comes to the wholesaler 19 to purchase the product, that the wholesaler 20 would sell the product to the customer for 21 the contract price? 22 A. I would have to actually read 23 the contract. I believe that the contract 24 says, if the wholesaler willingly provides 25 the customer, services that contract, we will</p>	<p style="text-align: right;">Page 596</p> <p>1 A. Yes. 2 Q. Okay. Were you the person who 3 set that price? Did you have the authority 4 to set the price? 5 A. No. 6 Q. Okay. And did you have to go 7 through a process to have an AWP established 8 for a product? 9 A. Yes. 10 Q. And what was that process? 11 A. Again, it changed over time. 12 When I first came to the company, in order to 13 change any price or initiate any price, there 14 was a specific template that had to be filled 15 out with the recommendations. And then it 16 had to be routed and approved through various 17 levels of management. Who signed off on it 18 changed overtime. 19 Later in the course, when we 20 began reporting to Mr. Russillo, he could 21 give the yea or nay. And it didn't have to 22 route further. Although, I believe we still 23 included different members of management. 24 MR. HEIDLAGE: I'm going to 25 apologize for this, but</p>
<p style="text-align: right;">Page 595</p> <p>1 reimburse him back down to that contract 2 price so that it makes him whole relative to 3 the customer. 4 I don't know what the specific 5 sentence is that you're trying to -- I don't 6 have recollection of an individual sentence 7 and the exact wording. 8 Q. Okay. I believe you testified 9 yesterday that you have some role in setting 10 prices; is that true? 11 A. Yes. 12 Q. And can you just describe for 13 the Jury what your role in setting prices has 14 been? 15 A. Up until the last three or four 16 years, when there was a pricing issue, I or 17 somebody in my group would research it and 18 make recommendations as to what would be an 19 appropriate price to change or initiate on a 20 product. 21 Q. Okay. Let's start first with 22 the kinds of prices that you had -- up 23 through three or four years ago, you had 24 responsibility for setting. First of all, 25 how about the AWP?</p>	<p style="text-align: right;">Page 597</p> <p>1 could you read back -- so I 2 don't waste your time -- 3 could you read back that 4 answer, please? 5 (Whereupon the requested portion 6 of the Record was read by the 7 Court Reporter.) 8 BY MR. HEIDLAGE 9 Q. Now, do you recall what kinds 10 of information were required be put onto the 11 template? 12 A. When I first came on board, I 13 probably need to look at the template. But 14 if it was a price change it would probably be 15 old price, new price. It may have had 16 product cost information, because I think we 17 had to route it through finance back then. 18 It varied over time. 19 Q. Okay. Now, I'd really like to 20 focus first on the AWP. 21 A. Uh-uh. 22 Q. All right. If you wanted to 23 establish or change the AWP for a product, 24 would you use this same template? 25 A. At the -- I would say that we</p>

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1 would use a template of -- we would use some
2 format. As things changed over time, we
3 would use whatever seemed relevant at the
4 time. Having a standardized form that was
5 used for the last, I don't know, twenty
6 years, whatever it was, the format would be
7 updated and changed. So it wasn't, you know,
8 cast in stone that this will occur every
9 time. It evolved like things do over, you
10 know, the ten or so years that we're
11 covering.

12 Q. Well, you know, this was one of
13 the specific areas that you were designated
14 to testify about. And I think that in the
15 first questions that I asked, you felt that
16 you could -- that you were knowledgeable
17 about the process and could speak to the
18 process of setting the AWP --

19 A. Yes.

20 Q. -- as one of the prices that
21 we've talked about and specifically referred
22 to.

23 A. Uh-huh (affirmative response).

24 Q. Did you do anything to remind
25

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1 yourself of the kinds of information that
2 were provided and the routing and so on to
3 establish an AWP, before this deposition?

4 MS. WITT: Object to the form.

5 A. Whatever -- I, I -- I'm not
6 understanding what you're asking. If we
7 were, in theory, to change an AWP, we would
8 have put forth a proposal in some format.
9 Depending on what time frame it occurred in,
10 the format may have changed. Depending on
11 whether it was an individual product or a
12 vast number of products, different formats
13 may have been more appropriate.

14 We would have put together a
15 document of some sort that said if it was a
16 change, this is what it used to be; this is
17 what we want it to be, and listed who at the
18 time was required to approve it and gotten
19 their signatures. So it changed over time.

20 Q. Ms. Waterer, I'm trying to help
21 the Jury understand what you actually did.
22 And I don't think from that answer that the
23 Jury could really understand what you did.
24 You said things may have happened; we may
25 have done stuff, whatever.

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1 But, you know, you're here to
2 testify about what actually did happen. And
3 if there is a template that we should be
4 looking for, I mean, I don't know what to
5 look for. In part, that's what the purpose
6 of this deposition is.

7 A. Uh-uh.

8 Q. Is there, was there a
9 template -- let me give you an example, and
10 go back and let's see if we can work through
11 this.

12 MS. WITT: Well, let me move to
13 strike the commentary.

14 Q. In yesterday or the day before,
15 there was a document that was produced and
16 that you identified as being the memorandum
17 that you had prepared in order to justify a
18 change in the Wholesale Acquisition Cost, the
19 WAC, right?

20 A. That was a unique example. If
21 you're talking about Furosemide, yes.

22 Q. I'm talking about the WAC --

23 A. Oh, I'm sorry.

24 Q. -- a memo in which you went
25 through a process. And the process that you

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1 went through, it appeared to be -- I don't
2 know if it was -- we'll get to that in a
3 moment. I don't know whether that was unique
4 or whether it was something that was common.

5 But you wrote a memo to your
6 supervisor. And in that memo you had a
7 recommendation of what you wanted to do, and
8 you had the reasons that you had wanted to do
9 it. And you could kind of follow through
10 what your thinking was.

11 Now, if you were going to go to
12 your senior management, and you were
13 recommending either a change in an AWP to
14 increase it or to reduce it, as a general
15 matter -- you said that things change.

16 Well, we'll start from 1996
17 when you started with the company: What
18 information did you have to provide your
19 senior management in order to justify that
20 change in the AWP?

21 MS. WITT: Object to the form
22 of the question. Is the
23 question, Tell me
24 everything that might have
25 happened at any time?

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1 MR. HEIDLAGE: No, I would like
2 to know what did happen
3 from --
4 Q. And if you can't remember,
5 we'll work through. You can tell me what you
6 do remember and what information you did
7 provide. Not, you know . . .
8 A. I'm trying very hard to help
9 you. And I'm trying to figure out how I can
10 phrase it to answer your question, because
11 you're asking about what was done over a
12 ten-year period through multiple management
13 changes. And things changed over time. The
14 general answer that would apply throughout
15 that whole period would be that a document of
16 some sort that had the information that we
17 believed was appropriate enough information
18 for management to understand what they needed
19 to understand to authorize the price
20 increase, decrease, or change on it would
21 have been presented. And depending on the
22 time and depending on what the individual
23 circumstances of the change were, the
24 document may or may not have had expansive
25 explanations. And over time, who would have

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1 to approve that document would change.
2 But consistent throughout the
3 period as price changes were documented,
4 there was an approval process. There was a
5 document that said, This is what -- this is
6 what we propose the price become. And senior
7 management in some way, shape, or form
8 documented that they approved it.
9 When I first got there, there
10 was a document that they used routinely for
11 product launches that had information that
12 they felt was appropriate for product
13 launches on it. When we did unusual things
14 that may have required more justification or
15 explanation because they were outside of the
16 norm, as you described, it would have been
17 appropriate to develop something with a
18 rationale behind it to help explain it if
19 they wouldn't know otherwise.
20 If it was a fairly obvious
21 change, it could have been as simple as, This
22 is what we're proposing; do you agree? So
23 it's very specific. Always a document;
24 always an approval. Other than that, they're
25 individual.

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1 Q. Okay. Could you just explain
2 to the Jury what the function in Roxane's
3 business was played by the AWP?
4 A. The function of AWP?
5 Q. Yes.
6 A. I don't believe that AWP had a
7 function other than a number that was
8 required that we present for the multisource
9 business. I mean, it was defined by how we
10 set it. And most commonly, we set it at
11 10 percent off of the brands. That was the
12 industry standard. It wasn't something that
13 we used. It wasn't something that was a
14 number that was important to Roxane, except
15 to the extent that a customer would bring to
16 our attention if it was putting us in a
17 position where we were unable to sell
18 product.
19 Q. Now, I think you testified
20 yesterday about the Furoseme circumstance.
21 Is that what you're referring to when a
22 customer would bring to your attention that
23 your AWP was not high enough to permit them
24 to purchase the product?
25 A. In the -- yes, in that case.

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1 Q. In your experience, over that
2 ten-year period -- strike that.
3 I think what you said, just to
4 make certain that I understand your
5 testimony -- is it true that if you were
6 going to do a quote, unquote, price increase
7 to charge your customers more, that would
8 really have nothing to do with the AWP, would
9 it?
10 A. Generally, if we took a price
11 increase where we were going to charge our
12 customers more, if you mean by that contract
13 price would go up? Is that what you mean?
14 Q. That could be, yes.
15 A. I'm trying to clarify, so I can
16 answer your question.
17 Q. Right.
18 A. That would typically be in a
19 situation, I think I referred to before,
20 where our product was in a sole generic or
21 sole available product position in which
22 case, it would be subject to occasional price
23 increases, typically within -- or actually
24 well-below, typically, an annual CPI. So in
25 that case, we would occasionally take a price

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<p style="text-align: right;">Page 618</p> <p>1 either them passing that through or incurring 2 extra expenses in set- up. 3 Q. Are these -- other than in the 4 initial launch of product or the trade show, 5 are there any discounts that a wholesaler may 6 receive? 7 A. There may be specific 8 individual instances. I'm not recalling any. 9 Those would be the typical ones. 10 Q. And how would one determine if 11 there are any other discounts that apply to a 12 purchase by a wholesaler? 13 A. It would be in the 14 transactional history. 15 Q. So is it your testimony that 16 the only way that a wholesaler reduces its 17 net cost is through the chargeback system, 18 other than these small discounts at initial 19 launch and then if they have a trade show? 20 MS. WITT: Object to the form 21 of the question. 22 A. Let me clarify. I think I've 23 repeatedly stated that I do not consider the 24 chargeback a reduction in the wholesaler's 25 net cost. That's squaring-up what he has</p>	<p style="text-align: right;">Page 620</p> <p>1 that you were responsible, at least in part, 2 for establishing the WAC, the Wholesale 3 Acquisition Cost, for any particular drug; is 4 that correct? 5 A. Yes. 6 Q. Okay. And can you just 7 describe for the Jury the procedures that you 8 went through in order to establish a WAC for 9 a drug? 10 A. Again, it would depend on a 11 specific instance. Are you talking about the 12 approval procedures or the thought process? 13 Q. Well, let's start with the 14 approval procedures, first. 15 A. Okay. That would have been the 16 same as I described earlier for what we went 17 through on AWP. It would have been any price 18 changes would require a formal sign- off and 19 some sort of documentation and approval. 20 Q. And what are the levels that 21 are required for approval on the corporate 22 level? 23 A. Yeah. It's changed over time. 24 And I would probably have to refer to the 25 individual documents to get it a -- in each</p>
<p style="text-align: right;">Page 619</p> <p>1 fronted, if you will, to one of the customers 2 that we have a contract arrangement with. So 3 that is not anything to do with the 4 wholesaler's net price, as I see it. That is 5 a contract price to another customer on 6 something that he's servicing. 7 So I will continue, when you 8 say that a chargeback is part of a 9 wholesaler's net price, to disagree in that 10 characterization. 11 The second part, I believe you 12 said that my testimony was that the only time 13 when a discount could ever occur would be in 14 those two specific instances. I believe my 15 testimony said that that is the usual and 16 customary times where we would see that, but 17 there may be other instances which I'm not 18 recalling. 19 Q. Would these other instances be 20 pursuant to specific programs that were in 21 place, or would they relate only to single 22 individual sales? 23 A. Because I'm not recalling any 24 specifics, I don't know how to answer that. 25 Q. Now, I think you've testified</p>	<p style="text-align: right;">Page 621</p> <p>1 time frame to get it a hundred percent 2 accurate. 3 Early on, it would go to 4 sign-offs, I believe included finance, and 5 Mr. Tupa. It may have included the other 6 senior level managers at Roxane. I don't 7 recall. 8 Q. If someone came to you and 9 said, you know, we need to find out how we 10 approved or who approved that WAC on that 11 product, is there any record that you would 12 go to in order to determine the answer to 13 that question? 14 A. We would look for the price 15 approval sign-off for that. And if it 16 occurred during the time period that we saved 17 records for that, we would likely have it 18 somewhere. If it occurred prior to the time 19 when we were instructed that we needed to 20 maintain those records, it would likely not 21 exist. 22 Q. Okay. And what is the time 23 period that you were instructed to maintain 24 the records? 25 A. I believe in 1998-ish, we were</p>

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<p>1 instructed to save records for a small number 2 of, as I recall, inhalation products. 3 Subsequent to that, there were broader 4 requirements. Without laying out every 5 document preservation notice -- I don't have 6 the information of what we were required at 7 each step. 8 MS. WITT: Let me caution you 9 not to reveal substance of 10 any communications that you 11 received from attorneys 12 that may have included 13 attorney-client privileged 14 information or what we 15 refer to as work product 16 information, which I'm sure 17 Mr. Heidlage agrees is not 18 encompassed in his 19 question. 20 BY MR. HEIDLAGE 21 Q. And I certainly was not 22 intending to ask you for those kinds of 23 communications. I'm really just trying to 24 pin down, you know, what kinds of records 25 exist and then where they are. And if they</p>	<p>1 Massachusetts and Roxane, that those 2 documents, if they existed, would have been 3 produced in connection with the litigation? 4 A. Absolutely. 5 Q. Okay. And the form of at least 6 one of the documents that would exist would 7 be a sign-off sheet; is that correct? 8 A. Again, it evolved over time. 9 It would have been early on a sign-off sheet. 10 I believe now that we use e-mail, and it 11 would have been, you know, a series of 12 e-mails stapled together saying that 13 everybody gave their approval that was 14 obligated. 15 Q. And so those would be hard 16 documents of some kind that are put into a 17 paper file? 18 A. Once it goes electronic, I'm 19 not certain whether it was maintained as a 20 hard copy, for example, in the product 21 history file or whether it was maintained 22 electronically in a computer e-mail file. 23 Whichever way that it existed would have been 24 produced. 25 Q. Okay. Now, is the -- can you</p>
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<p>1 don't exist because there was a poor 2 retention policy or something like that, we 3 can go through that. 4 So is it your understanding 5 that prior to 19 -- that the records with 6 regard to the approvals for price changes for 7 the period prior to 1998 are no longer in 8 existence? 9 A. May or may not be. I don't 10 know. 11 Q. Where would they be maintained 12 if they are in existence? 13 A. If they were in existence and 14 were -- any of the products -- were relevant 15 to any of the products in the variety of 16 cases that we're involved in, they would have 17 been produced. The originals would either 18 lie with our attorneys or Roxane in Columbus, 19 probably Roxane in Columbus, and most 20 recently, which I think is outside of the 21 relevant period, they would be in the product 22 files in the Cleveland area. 23 Q. So is it your understanding 24 that at least for the drugs that are at issue 25 in the litigation between the Commonwealth of</p>	<p>1 describe for the Jury what kinds of documents 2 will be contained in a -- in what you've 3 identified as a product history file? 4 A. I probably used a general term 5 to review -- to refer to the type of file 6 that I used to keep where I had my file 7 separated by product name. And if I had 8 something that was relevant that I felt -- 9 before it was required to be held, if it was 10 something relevant that I felt that I needed 11 to have access to into the future, I would 12 have put it into a folder that was labeled 13 with that product name. My e-mail files are 14 also separated that way. 15 Because of the number of 16 products that we have, it's common to see 17 that type of housekeeping within each 18 person's documents. 19 Q. In the documentation that we 20 saw yesterday and some we'll see today, with 21 regard to Furosemide, do you know what files 22 those documents were contained in? 23 A. I'm not trying to be circuitous 24 in answering this -- 25 THE WITNESS: -- and I'm</p>

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<p style="text-align: right;">Page 678</p> <p>1 which you now believe to have been incorrect 2 with regard to your testimony before? 3 A. I didn't read them at a level 4 of detail that I would have been able to do 5 that. 6 Q. Okay. At any time since those 7 depositions were taken, did you ever become 8 aware of the fact that any of your testimony 9 was erroneous? 10 A. Oh, yes. 11 Q. Okay. Do you recall what 12 matters you concluded were erroneous? 13 MS. WITT: I do want to object 14 to this line of questioning 15 in this particular 16 deposition since this is 17 her deposition as a 18 corporate deposition, and 19 those were not. So I think 20 that's beyond the scope. 21 Certainly it's not binding 22 Roxane testimony if you 23 want to use this time for 24 that. But I don't think 25 it's fairly within the</p>	<p style="text-align: right;">Page 680</p> <p>1 Court Reporter.) 2 A. I don't recall the specific 3 matters. My general recollection is that 4 they, for the most part, concerned items 5 where, like we've had today, I had a word 6 stutter where I said one word and meant 7 another. 8 In situations where a topic may 9 have changed -- and I'm making this up as an 10 example -- but a topic may have changed from 11 discussing AWP to then discussing WAC, and I 12 might not have picked up that in the course 13 of the discussion that we had switched, and 14 we're now talking about a different specific 15 item. So I was still answering back to 16 earlier, because my brain hadn't caught up. 17 For the most part, that's what 18 I remember as the types of errors in it. 19 Q. As a result of concluding that 20 there were mistakes or errors in the 21 testimony, did you prepare an errata sheet 22 that was filed with the deposition then? 23 A. Yes. 24 Q. And so were all of the mistakes 25 or errors that you had concluded occurred,</p>
<p style="text-align: right;">Page 679</p> <p>1 scope of the Notice of 2 this. 3 MR. HEIDLAGE: Okay. 4 A. What I recall is that at the 5 time that I -- may I have a moment with 6 counsel? 7 Q. Sure. 8 MS. WITT: You can't talk about 9 discussions with counsel. 10 We're going to step 11 out for a second. She has 12 a privilege concern. 13 THE VIDEOGRAPHER: Going off 14 the Record at 2:04 p.m. 15 (Brief recess.) 16 THE VIDEOGRAPHER: Back on the 17 Record at 2:08 p.m. 18 BY MR. HEIDLAGE 19 Q. Ms. Waterer, after conferring 20 with counsel, do you have an answer to that 21 question? 22 A. Can we restate the question to 23 get me oriented again? 24 (Whereupon the requested portion 25 of the Record was read by the</p>	<p style="text-align: right;">Page 681</p> <p>1 were those documented in an errata sheet? 2 A. No. 3 Q. So some were not? 4 A. None were. 5 Q. Step back for a second. I 6 think you testified that you -- that as a 7 result of learning of the mistakes that you 8 prepared an errata sheet, correct? 9 A. Let me help you out on this 10 one. 11 Q. Okay. 12 A. And it's going to be 13 nonresponsive. 14 My understanding at the time 15 was that the only changes I could make to an 16 errata sheet were those changes which would 17 represent an inaccuracy in the transcription 18 of what I said, as differentiated from an 19 inaccuracy in what I actually said. 20 Q. I see. Okay. 21 A. That's . . . 22 Q. Now, I want to go back to 23 the -- 24 MR. WINGET-HERNANDEZ: You 25 notice I am not joining in</p>

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<p>1 the objection.</p> <p>2 Q. Go back to the function of</p> <p>3 reporting to -- prices to First DataBank that</p> <p>4 Roxane did during the time period that you</p> <p>5 were there. How did that occur?</p> <p>6 A. I had a momentary blank. I</p> <p>7 missed the first three words of the question.</p> <p>8 Q. Okay. We're going to go back</p> <p>9 to actually the process that Roxane used for</p> <p>10 reporting its prices to First DataBank.</p> <p>11 Okay?</p> <p>12 A. Okay.</p> <p>13 Q. Okay. And first of all, who</p> <p>14 was responsible for that function during the</p> <p>15 time that you were there?</p> <p>16 A. It changed over the years. I</p> <p>17 believe when I first got there that the</p> <p>18 communication was done by an individual by</p> <p>19 the name of Cheri Mayhew. When Rich Feldman</p> <p>20 came on board, he felt that the communication</p> <p>21 should come from him. So he was signatory on</p> <p>22 the communications and went out that way.</p> <p>23 I believe that it stayed at the</p> <p>24 director level, sales management signatory on</p> <p>25 the communications going forward, but I'd</p>	<p>1 after me or a year and a half after me. I</p> <p>2 think it was the fall of '96 or -- I'm</p> <p>3 unclear.</p> <p>4 Q. Okay. And what was his</p> <p>5 position?</p> <p>6 A. I believe he had several</p> <p>7 different titles, but his position in terms</p> <p>8 of responsibility was to be, I think he came</p> <p>9 in initially as a director of the multisource</p> <p>10 group, the sales group. So at one point, his</p> <p>11 title was Director of Trade Relations. I</p> <p>12 believe at the time he left he had been</p> <p>13 either -- I think he was Executive Director</p> <p>14 or Vice President, and it may have been trade</p> <p>15 relations. And then there were several</p> <p>16 different title changes. Again, org charts</p> <p>17 would have to clarify that.</p> <p>18 Q. Do you -- what is your</p> <p>19 understanding of his general duties and</p> <p>20 responsibilities while he was there?</p> <p>21 A. He was in charge -- he was the</p> <p>22 one that was most senior in the sales line</p> <p>23 management of the multisource salespeople.</p> <p>24 Q. And how did it -- just going</p> <p>25 back for a second, prior to his coming to</p>
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<p>1 have to double-check.</p> <p>2 Q. When Ms. Mayhew was the person</p> <p>3 who was filling out or making the reports to</p> <p>4 First DataBank, what was her title or her</p> <p>5 role?</p> <p>6 A. I would have to refer to an org</p> <p>7 chart to get her title. I'm only aware of</p> <p>8 her role as it pertained to how she supported</p> <p>9 me personally. And in that, she was the</p> <p>10 person that sent things to the pricing</p> <p>11 compendia, and she was the person that worked</p> <p>12 with our advertising people. So I don't</p> <p>13 remember her particular title.</p> <p>14 Q. I see. But would she -- was</p> <p>15 she a person who reported to you?</p> <p>16 A. No.</p> <p>17 Q. And who did she normally report</p> <p>18 to?</p> <p>19 A. I'm not sure.</p> <p>20 Q. Okay. Then you said that when</p> <p>21 Mr. Feldman joined the company. And that --</p> <p>22 do you recall approximately when that</p> <p>23 occurred?</p> <p>24 A. I think it was after me. And I</p> <p>25 can't remember whether it was like six months</p>	<p>1 Roxane, the responsibility for reporting to</p> <p>2 First DataBank was yours; is that correct?</p> <p>3 A. No.</p> <p>4 Q. So I think you testified that</p> <p>5 Ms. Mayhew supported you by reporting to</p> <p>6 First DataBank?</p> <p>7 A. Yes.</p> <p>8 Q. And that's only because what</p> <p>9 she was doing is, is performing a function</p> <p>10 which was helpful to you; is that -- is that</p> <p>11 the testimony?</p> <p>12 A. Reporting to First DataBank,</p> <p>13 when I first came on board, was not part of</p> <p>14 my responsibility. If there is a price</p> <p>15 change, it would have gone to her, and her</p> <p>16 responsibility would have been to report it.</p> <p>17 There was no authority of me over Cheri to</p> <p>18 tell her to do it. It was standard practice</p> <p>19 when there was a price change that she got</p> <p>20 the information and reported it to the</p> <p>21 pricing compendia. So it wasn't something</p> <p>22 that I set up or controlled. It just</p> <p>23 happened.</p> <p>24 Q. At the time that the decision</p> <p>25 not to report WACs to First DataBank</p>

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<p style="text-align: right;">Page 686</p> <p>1 occurred, is it not -- was it not your 2 testimony that Mr. Feldman was an employee of 3 Roxane by that time? 4 A. Yes. 5 Q. And by that time, was -- did he 6 have the responsibility for reporting prices 7 and price changes to First DataBank? 8 A. If by reporting, do you mean 9 signing the letter that was sent to them, 10 yes. If you mean by having the 11 responsibility to report, did he physically 12 handle mailing or faxing the information to 13 the compendia, no. 14 Q. Did -- to your knowledge, was 15 his unit or -- strike that. 16 To your knowledge, were the 17 records of any communications with First 18 DataBank after he joined the company 19 maintained in his department? 20 A. I don't know if he kept copies 21 of his memos or not. 22 Q. Okay. Do you know whether his 23 files, his records, with regard to 24 communications with First DataBank were 25 produced in this litigation?</p>	<p style="text-align: right;">Page 688</p> <p>1 to everything to go through. 2 Q. Did you keep a log or create a 3 record of any kind of the documents that you 4 searched for and produced? 5 MS. WITT: Is that a you, 6 Roxane or you, Judy Waterer 7 question? 8 MR. HEIDLAGE: Actually, it's a 9 you, Roxane, question. 10 A. My understanding -- and log was 11 the word I was searching for earlier -- my 12 understanding is that that function was 13 performed by the attorneys who pulled the 14 documents. And our understanding is that -- 15 that the logs that were created are no 16 longer -- we can't find them. So . . . 17 Q. Were they -- were the attorneys 18 who actually pulled the records, were they 19 corporate attorneys, or were they from 20 outside counsel? 21 A. Outside counsel sent people 22 with expertise in that capability to our site 23 to pull the documents from my department. 24 Some other departments may have pulled their 25 own documents and sent them.</p>
<p style="text-align: right;">Page 687</p> <p>1 A. If they were available and 2 responsive, they were provided to counsel. 3 Counsel took all of the documents they had 4 and assessed what was responsive and 5 forwarded it. That's my best attempt to 6 answer. If they were there, they would have 7 been produced. 8 Q. Now, one of the -- one of the 9 subject matters is the -- for this 10 deposition -- was the production of 11 documents. Were you personally involved in 12 gathering documents for any of the 13 litigations? 14 A. Yes. 15 Q. And what did you do? 16 A. I was, I would say, the 17 corporate designate to make sure that all of 18 the documents from sales and marketing were 19 gone through appropriately. I was also 20 involved in helping determine who else within 21 the company might have responsive documents. 22 When it was time to pull the documents, I was 23 the representative that helped the 24 individuals collating the documents and going 25 through files, assuring that they had access</p>	<p style="text-align: right;">Page 689</p> <p>1 Q. When you say "my department," 2 does that mean both sales and marketing, or 3 were you speaking of marketing only? 4 A. That's a good point. My 5 department is not sales. But when I was 6 saying "my department", I was meaning the 7 Roxane sales and marketing group when we were 8 located in Columbus and then subsequently in 9 the greater Cleveland area. And in those 10 cases, attorneys' designees came in and 11 pulled all of the documents for both. 12 Q. Okay. Let me go over a couple 13 of questions on Roxane's participation in the 14 Medicaid programs and just ask you a couple 15 of questions on that as follow ups to your 16 testimony from two days ago. 17 When you say that Roxane 18 participates in Medicaid, when you testified 19 to that; what did that mean to you? 20 A. That meant to me that our 21 products are eligible for rebate to Medicaid 22 and that we pay Medicaid rebates on them. 23 Q. Okay. And I believe you 24 testified that if you did not participate 25 that you could not exist as a company, as a</p>

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